

**CENTRAL 70 PROJECT
MAINTENANCE CONTRACT
by and between
KIEWIT MERIDIAM PARTNERS LLC
and
ROY JORGENSEN ASSOCIATES, INC.**

Dated November 21, 2017

PART 1

ARTICLES OF AGREEMENT

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Central 70 Project

This Maintenance Contract (this “**Agreement**”) is dated as of the 21st day of November, 2017

BETWEEN:

Kiewit Meridiam Partners LLC (the “Developer”)

AND:

Roy Jorgensen Associates, Inc. (the “O&M Contractor”)

WHEREAS:

A. The Developer has on the date hereof entered into that certain Project Agreement for the Central 70 Project (the “**Project Agreement**”) with the High Performance Transportation Enterprise (“**HPTE**”), a government-owned business within and a division of the Colorado Department of Transportation (“**CDOT**”), and the Colorado Bridge Enterprise (“**BE**”, and together with HPTE, the “**Enterprises**”), a government-owned business within CDOT, for the design, construction, financing, operation and maintenance of a portion of the I-70 East corridor in the greater Denver area (the “**Project**”); and

B. the Developer wishes to contract with the O&M Contractor to perform the O&M Activities in accordance with the terms of this Agreement.

NOW IT IS HEREBY AGREED as follows:

1. Definitions; Interpretation

- 1.1 Capitalized terms that are defined in Annex A to Part 2 of this Agreement shall have the meaning set forth in such Annex A whenever used in this Agreement.
- 1.2 The principles of interpretation and construction set forth in Part 2, Section 2 of this Agreement shall apply in the interpretation of this Part 1 and each other part of or Schedule or Attachment to this Agreement.

2. The Agreement

- 2.1 This Agreement comprises:
 - 2.1.1 this Part 1 (referred to as “**Part 1**” or “**Articles of Agreement**”);
 - 2.1.2 Part 2 (referred to as “**Part 2**”); and
 - 2.1.3 all of the Attachments and Schedules listed in the Table of Contents in Part 2 of this Agreement;

3. Intentionally Omitted**4. Obligations of the Parties**

4.1 The O&M Contractor shall:

4.1.1 carry out and perform the O&M Activities in accordance with, and subject to the provisions of, this Agreement. For greater certainty, the O&M Contractor shall have no obligation or responsibility for the Excluded Obligations;

4.1.2 as between the Developer and the O&M Contractor, be responsible for all O&M Contractor-Related Entities in the performance of the O&M Activities and shall not be relieved of any liability or obligation under this Agreement by the appointment or engagement of any other O&M Contractor-Related Entity; and

4.1.3 comply with and properly perform all of its obligations under the O&M Project Documents.

4.2 Intentionally Omitted.

4.3 For greater certainty, but without prejudice to any time relief or compensation available in respect of any Developer Act or pursuant to the provisions of this Part 1 relating to Equivalent Project Relief, any cost overruns with respect to the O&M Activities shall be the responsibility of the O&M Contractor and not the Developer and any such cost overruns shall not reduce or otherwise affect the limitations on liability referred to or contained in Part 1, Article 10.

4.4 The Developer shall pay the O&M Contractor at the times and in the manner specified in Part 1, Article 12.

4.5 The Developer shall perform all of its obligations under the Project Agreement (except to the extent that such obligations are to be performed by the O&M Contractor pursuant to this Agreement or by the Construction Contractor pursuant to the Construction Contract), to the extent any failure to do so would or is reasonably likely to adversely affect the O&M Contractor's rights, or the performance of its obligations, under this Agreement, and shall at all times have regard to and take account of the obligations of the O&M Contractor under this Agreement in the carrying out of its obligations and the exercise of its rights under such document. The Developer shall use commercially reasonable efforts to enforce its rights under the Project Agreement and, where such rights relate to the O&M Activities, shall do so in consultation with the O&M Contractor, provided that:

4.5.1 where this Agreement includes specific provisions for the exercise or enforcement of rights under the Project Agreement (including, without limitation, the provisions of this Part 1 relating to Equivalent Project Relief) the specific provisions shall apply and this Part 1, Article 4.5 shall not apply; and

- 4.5.2 nothing in this Agreement shall be construed as a guarantee by the Developer of the performance by the Enterprises of any of their obligations under the Project Agreement.
- 4.6 The O&M Contractor shall have no obligation:
- 4.6.1 to finance or procure the senior debt, the junior debt (if any) or the equity necessary to finance the Project, except as expressly set forth in this Agreement including providing, or procuring the provision of, the security detailed in Part 1, Article 11, entering into the Lenders' O&M Direct Agreement, and complying with the obligations set forth in Part 2, Section 6 and Part 2, Section 29;
 - 4.6.2 to carry out any of the O&M Work that does not constitute O&M Work After Construction or is not included in the Scope of Services;
 - 4.6.3 in respect of the Developer's special purpose vehicle management costs;
 - 4.6.4 to perform any other obligation which is expressly stated to be the obligation of the Developer under this Agreement; or
 - 4.6.5 to perform any Renewal Work, except as set forth in the Renewal Threshold Matrix.

The obligations referred to in this Part 1, Article 4.6 are referred to in this Agreement as the “**Excluded Obligations**”.

5. The Project Agreement and Project Documents

- 5.1 In the event of any conflict between the provisions of Part 1, Articles 5.2 through 5.5, inclusive, and any specific provision of Part 2 or any Attachment or Schedule to this Agreement, the applicable provisions of Part 2 or the applicable Attachment or Schedule shall govern.
- 5.2 Where in the Project Agreement or any relevant O&M Project Document any matter is stated to be required to be notified to or submitted to the Enterprises or any other third party, or is stated to be subject to the consent or approval of the Enterprises or any other third party (or any equivalent procedure), then, to the extent that such matter relates to the performance of the O&M Activities, the O&M Contractor shall not proceed with such matter until the relevant notification, consent or approval has been given by such party or the Developer or the O&M Contractor is otherwise entitled to proceed in accordance with, the Project Agreement or the relevant O&M Project Document.
- 5.3 Except as otherwise set forth in Part 2, where, under this Agreement, the O&M Contractor is required to consult with, or obtain the consent or agreement of, the Developer, each party shall, in respect of such consultation or request for consent or agreement, act promptly under the circumstances, including the nature and urgency of the

subject matter, and so as to ensure that the other party has a reasonable amount of time in which to consider the outcome of the consultation or the request for consent or agreement and to respond before any relevant deadline in this Agreement, the Project Agreement or any O&M Project Document.

- 5.4 The Developer will forward to the O&M Contractor any notice, request or other communication that it receives that relates to the carrying out of the O&M Activities or would materially impact the ability of the O&M Contractor to perform its obligations under this Agreement, without undue delay, and in any case within three Working Days of receipt by the Developer (except where a different period is specified in Part 2 of this Agreement, or in an Attachment or Schedule to this Agreement).
- 5.5 Subject to the provisions of Part 2, Schedule 9 and, where applicable, the prior Approval of the Enterprises in accordance with Part 2, Section 57.1.1.c, if any notice, information, consent, claim, request, response, submission or other material communication (a “**Communication**”) is required or permitted under the terms of this Agreement to be given or made by the O&M Contractor directly to the Enterprises or any other third party, the O&M Contractor shall provide the Developer a copy of the same prior to giving or making the Communication to the Enterprises or such third party, to allow Developer reasonable time to review such Communication. In any event, the O&M Contractor shall provide a copy of such Communication to the Developer not less than three Working Days prior to giving or making the Communication to the Enterprises or such third party. If any Communication is required or permitted under the terms of this Agreement to be given or made by the O&M Contractor to the Developer, in respect of which a corresponding Communication must be given by the Developer to the Enterprises or any other third party under the Project Agreement or any O&M Project Document, the O&M Contractor shall:
- 5.5.1 provide such Communication not less than four Working Days prior to the time by which the Developer is required under the Project Agreement or the relevant O&M Project Document to submit the same, unless otherwise agreed in writing by the Developer, acting reasonably, or as specifically set forth in this Agreement; or
- 5.5.2 upon written request from the Developer, submit the Communication directly to the Enterprises or other third party.
- 5.6 The O&M Contractor shall (in addition to any other specific requirements related to the provision of information and documentation in this Agreement) promptly provide to the Developer all information and material documentation relating to the O&M Activities, the Project and/or the operation of this Agreement:
- 5.6.1 which it receives from any governmental authority, the Enterprises, any official, employee or agent of the Enterprises, a utility company or a railway company;

- 5.6.2 which the O&M Contractor sends to the Construction Contractor or any other Construction Contractor-Related Entity; and
- 5.6.3 which the Developer may otherwise reasonably request from time to time.

6. Equivalent Project Relief

- 6.1 To the extent that the O&M Contractor has a right, entitlement, remedy or defense under this Agreement in respect of which the Developer has a corresponding right, entitlement, remedy or defense (such corresponding right, entitlement, remedy or defense, the “**Developer Right**”) under the Project Agreement, the O&M Contractor shall be entitled to receive the benefit of such Developer Right in accordance with and subject to the provisions of this Part 1, Article 6 including, without limitation, the benefit of:
 - 6.1.1 any contribution, indemnification, compensation, damages or other additional payment of any kind to the extent the Developer is entitled to such contribution, indemnification, compensation, damages or other additional payment of any kind under the Project Agreement;
 - 6.1.2 any other relief (including, without limitation, any extension of time) from the performance of its obligations under, or from termination of, this Agreement to the extent that the Developer is entitled to be relieved from performance of equivalent obligations under, or from termination of, the Project Agreement (including, for the avoidance of doubt, any relief to which the Developer may be entitled as a result of a Supervening Event);
 - 6.1.3 any entitlement of the O&M Contractor under this Agreement in respect of which any provision of this Agreement states that:
 - 6.1.3.1 this Part 1, Article 6 or the provisions generally relating to Equivalent Project Relief shall apply; or
 - 6.1.3.2 the O&M Contractor may make an Equivalent Claim or issue an Equivalent Claim Notice;
 - 6.1.4 any certificate, consent or approval granted under this Agreement, the Project Agreement or any other agreement, statute, bylaw or regulation in regard to any matter relating to the O&M Activities, including any entitlement of the Developer to request or apply for such certificate, consent or approval from the Enterprises, or any other person under this Agreement or the Project Agreement; and
 - 6.1.5 any benefit arising out of any Change Order or Directive Letter issued by the Enterprises pursuant to Schedule 24 to the Project Agreement in respect of the Project,

but excluding, for greater certainty, (a) any payments made by the Enterprises to the Developer in respect of the Project Debt or any other obligation of the Developer under the Financing Agreements; (b) any payments made by the Enterprises to the Developer in respect of Milestone Payments or the Substantial Completion Payment; (c) any payments made by the Enterprises to the Developer in respect of Performance Payments, except to the extent that such payments, or portions thereof, are being used to fund payments to the O&M Contractor; and (d) any other payments made by the Enterprises to the Developer in respect of amounts specifically claimed by the Developer (and for certainty not corresponding to amounts claimed by the O&M Contractor) in respect of costs, expenses or liabilities incurred by the Developer. The Developer Rights under the Project Agreement, when and to the extent such Developer Rights are exercised for the O&M Contractor's benefit, are referred to in this Agreement as "**Equivalent Project Relief**".

- 6.2 If an event or circumstance occurs which gives rise to an entitlement on the part of the O&M Contractor to claim or receive the benefit of any Equivalent Project Relief, the O&M Contractor may upon the occurrence of such event or circumstance give notice (an "**Equivalent Claim Notice**") of the same to the Developer. Such Equivalent Claim Notice shall include full details of the relevant event or circumstance, to the extent reasonably available at the time such Equivalent Claim Notice is submitted and having regard to the formal requirements set forth in this Agreement and the Project Agreement, and such supporting documentation and information as the Developer may reasonably require.
- 6.3 The O&M Contractor shall provide the relevant Equivalent Claim Notice to the Developer as soon as reasonably practicable after it becomes aware of the fact that an event or circumstance gives rise to a claim for Equivalent Project Relief (an "**Equivalent Claim**") (having regard to any time limit for submission of such Equivalent Claim by the Developer to the Enterprises under the Project Agreement).
- 6.4 If the O&M Contractor submits an Equivalent Claim Notice to the Developer, then, subject to the provisions of Part 1, Article 6.13:
- 6.4.1 the Developer shall, promptly following receipt of such Equivalent Claim Notice, submit to the Enterprises an Equivalent Claim reflecting the O&M Contractor's Equivalent Claim Notice;
- 6.4.2 the O&M Contractor shall provide such additional details and/or information as may be reasonably requested by the Developer or by the Enterprises through the Developer in relation to the Equivalent Claim;
- 6.4.3 the Developer shall, at its option, either:
- 6.4.3.1 subject to Part 1, Article 7.4, use its reasonable commercial efforts to pursue the Equivalent Claim with the Enterprises, provided that the O&M Contractor shall: (i) provide all assistance which the Developer acting reasonably considers necessary to substantiate any Equivalent

Claim, including the collection of information and details relating to the relevant Equivalent Claim and the making available of personnel to assist the Developer in the pursuit of the Equivalent Claim; and (ii) keep the Developer informed at all times (including providing copies of any documentation reasonably requested) of any matter relevant to the pursuit of the Equivalent Claim of which the O&M Contractor becomes aware; or

6.4.3.2 subject to Part 2, Section 57.1.1.c and Section 6 of Schedule 25 (*Dispute Resolution Procedure*), elect not to pursue the relevant Equivalent Claim with the Enterprises, in which case the Developer shall, within five Working Days of receipt of the Equivalent Claim Notice (or such other reasonable period, having regard to any time limit for submission of such Equivalent Claim by the Developer to the Enterprises under the Project Agreement), notify the O&M Contractor in writing that it has elected not to pursue such Equivalent Claim, and the O&M Contractor shall be authorized to pursue the Equivalent Claim with the Enterprises in the name of and on behalf of the Developer (in furtherance of which, the Developer shall execute such documents as may be reasonably required to give effect to this provision), provided that the O&M Contractor shall: (i) keep the Developer informed at all times (including providing copies of any documentation reasonably requested) of the progress and outcome of such Equivalent Claim; and (ii) comply with all applicable provisions of the Project Agreement; or

6.4.3.3 where the Equivalent Claim is in respect of an amount less than \$5,000,000, inform the O&M Contractor that the Developer does not wish to pursue such Equivalent Claim and that the O&M Contractor shall not be authorized to pursue the Equivalent Claim pursuant to Part 1, Article 6.4.3.2, but that the O&M Contractor shall be entitled to recover from the Developer the full benefit of the Equivalent Project Relief pursuant to the provisions of Part 1, Article 6.13.

6.4.4 if the Developer elects to pursue the Equivalent Claim pursuant to Part 1, Article 6.4.3.1:

6.4.4.1 the O&M Contractor and any other relevant O&M Contractor-Related Entities shall be entitled (if and to the extent permitted by the Enterprises), and may be required by the Developer, to attend any meetings between the Enterprises and the Developer at which the Equivalent Claim is to be discussed and the O&M Contractor may, at its sole cost and expense, appoint counsel for such purpose;

6.4.4.2 the Developer shall consult with the O&M Contractor with respect to the appointment of counsel (other than counsel appointed by the

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- O&M Contractor pursuant to Part 1, Article 6.4.4.1) and other third party advisors, provided that the Developer shall not appoint counsel who are not acknowledged experts in dealing with the subject matter of the Equivalent Claim, but shall otherwise have sole discretion in such appointments after reasonable consultation with the O&M Contractor; and
- 6.4.4.3 the Developer shall not be entitled to settle any Equivalent Claim, or waive any contractual right to an Equivalent Claim if such settlement or waiver would adversely affect any right of the O&M Contractor, without the prior written consent of the O&M Contractor, such consent not to be unreasonably withheld, conditioned or delayed.
- 6.4.5 if the Developer authorizes the O&M Contractor to pursue the Equivalent Claim pursuant to Part 1, Article 6.4.3.2:
- 6.4.5.1 the Developer shall be entitled to attend any meetings between the Enterprises and the O&M Contractor at which the Equivalent Claim is to be discussed and the Developer may, at its sole cost and expense, appoint counsel for such purpose; and
- 6.4.5.2 the O&M Contractor shall not be entitled to settle any Equivalent Claim, or waive any contractual right under the Project Agreement if such settlement or waiver would adversely affect any right of the Developer, without the prior written consent of the Developer, such consent not to be unreasonably withheld, conditioned or delayed.
- 6.5 The O&M Contractor shall only be entitled to the benefit of any Equivalent Project Relief if and to the extent that the Developer is or becomes entitled to any entitlement or benefit under the Project Agreement as provided in Part 1, Articles 6.1 and 6.6, but in any event to no greater extent than the Developer's entitlement or benefit under the Project Agreement determined pursuant to either:
- 6.5.1 an agreement between the Developer (or the O&M Contractor where the O&M Contractor has been authorized to pursue the Equivalent Claim pursuant to Part 1, Article 6.4.3.2) and the Enterprises effected in accordance with Part 1, Article 6.4.4.3 and subject to the provisions of Part 1, Article 6.6; or
- 6.5.2 a determination made pursuant to the Project Agreement Dispute Resolution Procedure which is binding upon the Developer and the Enterprises.
- 6.6 Subject to Part 1, Article 6.13, the O&M Contractor shall not be entitled to receive any entitlement or benefit in respect of any Equivalent Project Relief under this Part 1, Article 6 (including without limitation any payment or other compensation) until the Developer has actually received such entitlement or benefit from the Enterprises. In addition, the

O&M Contractor's entitlement or the benefit of any Equivalent Project Relief under this Part 1, Article 6 shall:

- 6.6.1 where the agreement or determination referred to in Part 1, Article 6.5 expressly separately identifies the amount, nature or extent of the Developer's entitlement attributable to the O&M Contractor or the O&M Activities, be the amount, nature or extent so identified; or
 - 6.6.2 where the agreement or determination referred to in Part 1, Article 6.5 does not separately identify the amount, nature or extent of the Developer's entitlement attributable to the O&M Contractor or the O&M Activities, be proportionate to the extent applicable to the O&M Contractor's rights, benefits or entitlements under this Agreement, it being acknowledged between the Developer and the O&M Contractor that the party(ies) bearing the risks and costs associated with an entitlement shall be entitled to a proportionate amount of the benefit arising therefrom.
- 6.7 If the parties are unable to agree, pursuant to Part 1, Article 6.6.2 on what is a fair and reasonable proportion of such entitlement within 15 Working Days of a written request by either party to agree on the same, either party may refer the matter to the Dispute Resolution Procedure.
- 6.8 Following agreement or determination of the entitlement of the O&M Contractor under Part 1, Article 6.6 or 6.7, as the case may be:
- 6.8.1 where such entitlement consists of relief from performance of obligations, the O&M Contractor shall be relieved from the performance of its obligations under this Agreement to the extent of such entitlement;
 - 6.8.2 where such entitlement consists of an extension of time, the O&M Contractor shall be entitled to a corresponding extension of time under this Agreement; and
 - 6.8.3 where such entitlement consists of a positive adjustment to payments due to the Developer under the Project Agreement or the payment of a lump sum by the Enterprises to the Developer, as the case may be, the Developer shall pay to the O&M Contractor the amount of such entitlement no later than five Working Days, after receipt of the corresponding payment from the Enterprises (and in accordance with the provisions of Part 1, Article 6.6). The Developer shall not pay the O&M Contractor for such entitlement other than on a lump sum or progress basis as the work is performed, without the prior consent of the O&M Contractor, such consent not to be unreasonably withheld, conditioned or delayed.
- 6.9 Pending the determination, agreement or resolution of the O&M Contractor's entitlement to Equivalent Project Relief, the O&M Contractor shall continue to perform its obligations under this Agreement and shall take no steps to enforce any right under this

Agreement whether by set-off against sums otherwise payable to the Developer, by commencing proceedings of any kind, by counterclaiming in any proceedings or otherwise howsoever, to the extent that, pursuant to the terms of this Agreement, such right depends upon or is related to the relevant agreement or determination of Equivalent Project Relief. Notwithstanding the foregoing, the parties agree that nothing contained in this Part 1, Article 6.9 will preclude the O&M Contractor from commencing legal proceedings in an applicable state or federal court if such proceedings are necessary to preserve any applicable limitation period.

- 6.10 Following the final determination, agreement or resolution of the O&M Contractor's entitlement to the benefit of any Equivalent Project Relief, the O&M Contractor shall be conclusively deemed to have waived any rights under or in connection with this Agreement in excess of those arising from such determination, agreement or resolution, but without prejudice to the O&M Contractor's rights and remedies with respect to a Developer Act. Accordingly, except as provided in the preceding sentence, the O&M Contractor shall not take any steps, under the Dispute Resolution Procedure or otherwise, to argue that any entitlement of the O&M Contractor under Part 1, Article 6.1 should be resolved other than by reference to the resolution of the O&M Contractor's entitlement to the benefit of any Equivalent Project Relief and the O&M Contractor hereby waives any right to do so.
- 6.11 If, in relation to any Equivalent Project Relief, the Developer fails to comply with its obligations under this Agreement, including, without limitation, failure to comply with Part 1, Article 6.12, and as a consequence of such failure the entitlement of the O&M Contractor is likely to be reduced or lost, then, unless such failure was caused by any act or omission by the Enterprises, any person for whom the Enterprises is responsible, the O&M Contractor, any other O&M Contractor-Related Entity, the Construction Contractor or any other Construction Contractor-Related Entity, the O&M Contractor may give notice to the Developer specifying the failure and the likely reduction in or loss of the entitlement of the O&M Contractor and requiring the Developer to remedy the relevant failure.
- 6.12 If the Developer fails:
- 6.12.1 to remedy such failure within 15 Working Days of the date of receipt of notice pursuant to Part 1, Article 6.11;
 - 6.12.2 to provide the O&M Contractor with proposals for remedying such failure which are acceptable to the O&M Contractor, acting reasonably, within 15 Working Days of the date of receipt of notice pursuant to Part 1, Article 6.11 (and any disputes relating to any such determination by the O&M Contractor shall be resolved pursuant to the Dispute Resolution Procedure); or
 - 6.12.3 to fulfill the terms of an acceptable proposal provided to the O&M Contractor in accordance with Part 1, Article 6.12.2,

then the O&M Contractor may serve a further notice upon the Developer that the O&M Contractor is no longer bound by the provisions of Part 1, Articles 6.4 to 6.10 in relation to the entitlement concerned and the provisions of Part 1, Article 6.13 shall apply.

6.13 If;

6.13.1 the provisions of Part 1, Articles 6.4 to 6.10 are disapplied in accordance with Part 1, Article 6.12; or

6.13.2 the Developer has elected not to proceed with an Equivalent Claim pursuant to Part 1, Article 6.4.3.3,

then the O&M Contractor shall be entitled to recover from the Developer the full benefit of the Equivalent Project Relief it would have been entitled to claim as if the Developer had succeeded in obtaining the full amount of the claim from the Enterprises under the Project Agreement. The O&M Contractor shall have no right or recourse whatsoever directly to the Enterprises and shall bring no claim whatsoever against the Enterprises in respect of the benefit of such entitlement and its rights and remedies in respect of such entitlement shall be limited to the right to recover from the Developer under this Part 1, Article 6.13. If the parties are unable to agree upon the nature or amount of such entitlement within 15 Working Days of a written request by either party to agree on the same, either party may refer the matter to the Dispute Resolution Procedure.

6.14 Subject to Part 1, Article 6.15, the provisions of this Part 1, Article 6 set forth the sole and exclusive rights and remedies of the O&M Contractor in relation to the entitlements referred to in Part 1, Article 6.1 and the O&M Contractor shall not be entitled to any other right or remedy of any kind whatsoever (whether in contract, tort, breach of statutory duty or under any other theory of law or equity) in respect of the same.

6.15 The provisions of Part 1, Articles 6.1 to 6.14, inclusive, are without prejudice to the rights and remedies available to the O&M Contractor in respect of any Developer Act.

7. Enterprise-Related Proceedings

7.1 This Part 1, Article 7 applies where the Enterprises assert or exercise any right against the Developer under or in connection with the Project Agreement, in regard to any matter in respect of which the Developer asserts or exercises a right against the O&M Contractor under or in connection with this Agreement, or to the extent that such right is related to the O&M Activities or to the rights or obligations of the O&M Contractor under this Agreement, including, without limitation, reductions in or deductions from payments under the Project Agreement, claims for indemnification and claims for damages for breach of such agreement (an assertion or exercise of such rights by the Enterprises being referred to in this Part 1, Article 7 as an “**Enterprise Claim**”).

7.2 If an Enterprise Claim is made:

- 7.2.1 the Developer shall promptly notify the O&M Contractor of such Enterprise Claim and use commercially reasonable efforts to challenge and defend the Enterprise Claim under and in accordance with the Project Agreement and in accordance with the O&M Contractor's reasonable directions;
- 7.2.2 the O&M Contractor shall prepare and each of the O&M Contractor and the Developer shall endeavour in good faith to agree on a protocol for challenge to, and/or defence of, any Enterprise Claim, which shall conform to the principles set forth in this Part 1, Article 7.2 and shall comply with and be consistent with the provisions of the Project Agreement and the O&M Contractor and the Developer will follow and observe any protocol so agreed;
- 7.2.3 the Developer shall consult with the O&M Contractor regarding any proposal to make any compromise or admission in relation to any Enterprise Claim, and shall not make any such compromise or admission without first obtaining written consent from the O&M Contractor, such consent not to be unreasonably withheld, conditioned or delayed (and any disputes relating to any such consent shall be resolved pursuant to the Dispute Resolution Procedure) and if the O&M Contractor unreasonably withholds, conditions or delays its consent to any compromise or admission in respect of an Enterprise Claim so that the Developer is required to continue to defend or challenge such Enterprise Claim, then, in addition to the O&M Contractor's obligations under Part 1, Article 7.4, the O&M Contractor shall be liable for and shall indemnify and hold harmless the Developer from and against the value to the Developer of any lost compromise or agreement previously available to the Developer plus additional costs and expenses incurred by the Developer should the defense or challenge to the Enterprise Claim prove unsuccessful, provided always that the Developer shall not be entitled to double recovery;
- 7.2.4 during the course of any dispute in relation to an Enterprise Claim, the O&M Contractor will continue to perform the O&M Activities (including any O&M Activities that are the subject of the Enterprise Claim) in a diligent manner and without delay and will be governed by all applicable provisions of this Agreement, and the Developer shall continue to make payments of any amounts not in dispute pursuant to the terms of this Agreement. The O&M Contractor shall keep complete records of extra costs and time incurred in relation to the O&M Activities subject to such dispute, and shall provide access to such records to the Developer and any person given jurisdiction to resolve such dispute;
- 7.2.5 where the O&M Contractor challenges or defends any Enterprise Claim pursuant to the provisions of Part 1, Article 7.2.8, the O&M Contractor shall consult with the Developer regarding any proposal to make any compromise or admission in relation to any Enterprise Claim, and shall not make any such compromise or admission without first obtaining written consent from the Developer, such consent not to be unreasonably withheld, conditioned or

delayed (and any disputes relating to any such consent shall be resolved pursuant to the Dispute Resolution Procedure) and if the Developer unreasonably withholds, conditions or delays its consent to any compromise or admission in respect of an Enterprise Claim, so that the O&M Contractor is required to continue to defend or challenge such Enterprise Claim, then, the Developer shall be liable for and shall indemnify and hold harmless the O&M Contractor from and against the value to the O&M Contractor of any lost compromise or agreement previously available to the O&M Contractor plus additional costs and expenses incurred by the O&M Contractor should the defense or challenge to the Enterprise Claim prove unsuccessful, provided always that the O&M Contractor shall not be entitled to double recovery;

- 7.2.6 the Developer and the O&M Contractor shall keep each other informed as to the progress of the relevant Enterprise Claim and shall provide each other with copies of all the documents relating thereto;
- 7.2.7 the O&M Contractor shall, and shall cause each other O&M Contractor-Related Entity to, provide the Developer with such information as is in its control or possession and as the Developer may reasonably require to defend the Enterprise Claim, including, without limitation, providing information and making available relevant personnel (and if the Developer permits the O&M Contractor to challenge or defend an Enterprise Claim on its behalf pursuant to Part 1, Article 7.2.8, the Developer shall, and shall cause the other Developer-Related Entities to, provide such information and make available relevant personnel to the O&M Contractor); and
- 7.2.8 subject to Part 2, Section 57.1.1.c and Section 6 of Schedule 25 (*Dispute Resolution Procedure*), notwithstanding anything else in this Part 1, Article 7.2, the Developer may, on terms to be mutually agreed, permit the O&M Contractor to challenge or defend an Enterprise Claim for and on behalf of and in the name of the Developer.
- 7.3 Subject to the Developer being in compliance with its obligations under Part 1, Article 7.2, any determination or agreement made or reached under the Project Agreement as to the amount, nature and extent of the Developer's liability in relation to any Enterprise Claim shall be binding on the O&M Contractor. For greater certainty, where such liability consists of a negative adjustment to payments due to the Developer under the Project Agreement or the payment of a lump sum by the Developer to the Enterprises, as the case may be, the O&M Contractor shall pay to the Developer the O&M Contractor's proportion of such liability promptly and, in any event, no later than three Working Days prior to the date upon which such amounts are due to be paid by the Developer to the Enterprises under the Project Agreement.
- 7.4 Subject to Part 2, Section 35.6, the O&M Contractor shall bear and discharge on a current basis, and shall indemnify the Developer against all Losses reasonably and properly incurred by the Developer in complying with Part 1, Articles 6 or 7, not including the

costs of the Developer’s own personnel (but including, without limitation, any out-of-pocket expenses of such personnel and including, without limitation, costs and expenses of the Enterprises or other persons where the O&M Contractor or the Developer becomes liable to pay the same) arising from operation of Part 1, Articles 6 or 7, except to the extent that:

- 7.4.1 they arise from any Developer Act; or
- 7.4.2 the benefit of an Equivalent Claim or the liability for an Enterprise Claim will be shared by the parties, in which case each party shall bear a fair and reasonable proportion of the related costs and expenses.

8. Intentionally Omitted

9. Intentionally Omitted

10. Limitations on Liability

- 10.1 Subject to Part 1, Article 10.3, without a termination of this Agreement, the O&M Contractor’s maximum aggregate liability under this Agreement for any given calendar year, including for default, breach of contract, negligence or otherwise in connection with the O&M Activities, shall [REDACTED] annual Base O&M Fee due to the O&M Contractor in such calendar year (such cap for a particular year, the “**Initial O&M Liability Cap**”).
- 10.2 Subject to Part 1, Article 10.3, on termination of this Agreement, the O&M Contractor’s maximum aggregate liability under this Agreement, including for default, breach of contract, negligence or otherwise in connection with the O&M Activities, [REDACTED] (index-linked) (the “**Termination Liability Cap**”). The Termination Liability Cap shall include any liability for then outstanding claims, liabilities or obligations, but shall exclude any amounts previously paid by the O&M Contractor in settlement of prior claims, liabilities or obligations (in respect of which the applicable Initial O&M Liability Cap, but not the Termination Liability Cap, shall apply) and any amounts previously applied to such Initial O&M Liability Cap. For the avoidance of doubt, subject to the exclusions set forth below in Part 1, Article 10.3 hereof, the O&M Contractor’s liability on termination of this Agreement shall not exceed the amount referenced as the Termination Liability Cap in this Part 1, Article 10.2 and shall not be increased by any unused portion of the Initial O&M Liability Cap.
- 10.3 The limitations of liability in Part 1, Articles 10.1 and 10.2 shall not apply to, nor shall the calculation thereof include:
 - 10.3.1 any liabilities or obligations to the extent that:

- 10.3.1.1 the amount thereof is paid from the proceeds of insurance maintained by the Enterprises or the Developer or the proceeds of insurance required to be maintained by the Developer or the O&M Contractor under this Agreement (but excluding any amount above the maximum insured amount required of the O&M Contractor under this Agreement); or
- 10.3.1.2 the amount is paid by the O&M Contractor and subsequently recovered by the O&M Contractor from any insurance proceeds up to the maximum amount required to be maintained by the O&M Contractor, the Construction Contractor or the Developer under this Agreement or the Construction Contract, as applicable; or
- 10.3.1.3 the amount is paid by the O&M Contractor and subsequently recovered by the O&M Contractor from the Enterprises or any third party (which excludes any entity providing insurance); or
- 10.3.1.4 the same would have been recovered through insurance if the O&M Contractor had maintained the coverage required to be maintained by it under this Agreement or if the O&M Contractor had otherwise complied with its obligations under applicable insurance policies and taken commercially reasonable steps to pursue the relevant insurance claim; or
- 10.3.1.5 deductibles in connection with any insurance policy paid by the O&M Contractor in accordance with this Agreement; or
- 10.3.1.6 liabilities arising out of any encumbrances created by the O&M Contractor or any other O&M Contractor-Related Entity attaching to the Site or any Project-related assets.

provided that, to the extent that amounts are recoverable by the O&M Contractor through insurance with respect to a liability or obligation of the O&M Contractor to the Developer, but such insurance proceeds have not actually been recovered by the O&M Contractor as at the date that a claim of the Developer is finally determined, the O&M Contractor shall, at the request of the Developer, assign to the Developer all rights to receive such insurance proceeds;

- 10.3.2 liabilities that arise out of third party claims (which for clarity does not include claims from the Construction Contractor, the Enterprises or the Lenders) associated with the O&M Activities or the performance by the O&M Contractor or any other O&M Contractor-Related Entity of any obligations under this Agreement (including, without limitation, any third party claims for any damage or destruction of property, death or personal injury or third party Intellectual Property);

-
- 10.3.3 liabilities that arise out of abandonment (other than as a consequence of a Developer Act or exercise by the O&M Contractor of suspension or termination rights in accordance with this Agreement);
 - 10.3.4 liabilities that arise out of gross negligence, willful misconduct or fraud, or any fraudulent misrepresentation, of the O&M Contractor or any other O&M Contractor-Related Entity;
 - 10.3.5 liabilities that arise out of the O&M Contractor's bankruptcy or insolvency;
 - 10.3.6 liabilities that arise out of the O&M Contractor's indemnity obligations in connection with the O&M Activities;
 - 10.3.7 interest due to the Developer as a result of any failure on the part of the O&M Contractor to make payment to the Developer when the same is due;
 - 10.3.8 fines and penalties under statute or any costs reasonably incurred by the Developer in complying with statutory obligations that arise out of any breach by the O&M Contractor or any other O&M Contractor-Related Entity of any applicable laws, regulations, or rules or guidelines having the force of law (including breaches relating to workman's compensation, employment or health and safety laws or regulations);
 - 10.3.9 any amount paid to the Developer by the O&M Contractor, to the extent that same is subsequently recovered by the O&M Contractor from the Developer, a Developer-Related Entity or the Construction Contractor pursuant to the terms of the Interface Agreement or otherwise;
 - 10.3.10 any reasonable amount incurred by the Developer in enforcing any claim against the O&M Contractor under or in connection with this Agreement, including any costs, losses, fees, expenses or damages incurred in the enforcement of any of the performance security referred to in Part 1, Article 11 for which claim and which costs, losses, fees, expenses or damages of enforcement O&M Contractor is determined to be responsible pursuant to the Dispute Resolution Procedure;
 - 10.3.11 costs, liabilities and obligations arising from the O&M Contractor's failure to comply with environmental laws and other obligations under this Agreement in respect of environmental matters; and/or
 - 10.3.12 to the extent this Agreement is terminated prior to the Substantial Completion Date, costs, liabilities and obligations up to [REDACTED].

For the avoidance of doubt, costs incurred by the O&M Contractor in performing the base obligations in respect of the O&M Activities under this Agreement shall also not be

taken into account in determining whether the Initial O&M Liability Cap or the Termination Liability Cap, as applicable, has been reached.

- 10.4 In the event that, without a termination of this Agreement, in any given year, the aggregate liability of the O&M Contractor under this Agreement reaches an amount that is 70% of the Initial O&M Liability Cap for such year, the O&M Contractor shall furnish the Developer with notice of the same.

11. Performance Security

- 11.1 On the execution and delivery of this Agreement, the O&M Contractor shall enter into the Lenders' O&M Direct Agreement in the form attached to Part 2 of this Agreement as Attachment B.
- 11.2 The O&M Contractor shall provide Contractor Bonds in accordance with Part 2, Section 9.3 of this Agreement.

12. Payments to O&M Contractor

- 12.1 The Developer shall pay to the O&M Contractor a fee in the amount of [REDACTED] 52 equal monthly installments, beginning with the first full month during the Construction Period. Each such monthly installment shall be paid by the Developer within 10 Working Days following the end of the month for which such monthly installment applies.
- 12.2 The Developer shall, subject to the Pay-if-Paid Provisions, pay the O&M Contractor the O&M Fee (indexed), in monthly installments, as compensation for the O&M Contractor's performance of the O&M Activities in accordance with Part 2 of Schedule 4. The O&M Fee is inclusive of all applicable Taxes, but shall account for Performance Payment deductions as set forth in Part 3 of Schedule 6.
- 12.3 Subject to Section 3.7(a) and Section 3.7(b) of the Interface Agreement and to the extent that the O&M Work During Construction Subcontractor has not received compensation from the Construction Contractor pursuant to the O&M Work During Construction Contract in respect of the same, if the O&M Contractor suffers any unavoidable Loss as a result of a Delayed Completion, the Developer shall reimburse the O&M Contractor for such Losses within 10 Working Days of the receipt of payment in respect of such Delayed Completion by the Construction Contractor, provided that the Developer's maximum liability under this Part 1, Article 12.3 shall not exceed \$10,888 per day by which Substantial Completion is delayed beyond the Baseline Substantial Completion Date and \$3,974,088 in the aggregate.
- 12.4 If the first or last Payment Month is a partial month, any computation made on the basis of a Payment Month shall be adjusted on a pro-rata basis to take account of the partial period of service.

- 12.5 Payments made to the O&M Contractor will be net of any withholding Taxes and other withholdings, which the Developer is permitted to make pursuant to this O&M Contract or otherwise required by Law to deduct before making payment to the O&M Contractor.
- 12.6 The provisions set forth in this Part 1, Article 12.6 shall collectively be referred to as the **“Pay-if-Paid Provisions”**.
- 12.6.1 Unless otherwise expressly stated to the contrary in this Agreement, whenever a provision in this Agreement provides that such provision is subject to the Pay-if-Paid Provisions or the O&M Contractor shall only be entitled to compensation in the event and only to the extent (or words of similar effect) that the Developer actually receives the corresponding compensation under the Project Agreement or the Construction Contract, as the case may be, or that the O&M Contractor’s entitlement to compensation shall be conditional upon and only to the extent (or words of similar effect) that the Developer receives the corresponding compensation under the Project Agreement or the Construction Contract, as the case may be, then payment of the amount in question to the Developer will be a strict condition precedent to the obligation of the Developer to make a payment to the O&M Contractor under the relevant provision of this Agreement.
- 12.6.2 The O&M Contractor acknowledges and agrees that with respect to any payment owed by the Developer to the O&M Contractor under this Agreement that is subject to these Pay-if-Paid Provisions: (i) it will comply with the requirements of, and enforce against the Enterprises, its rights to payment under the Project Agreement in order to ensure that any corresponding payments owed by the Enterprises under the Project Agreement are paid to the Developer as and when contemplated by the Project Agreement, (ii) the O&M Contractor shall provide the Developer, along with any request for such payment as required by this Agreement, all necessary certifications, invoices, reports, affidavits and information required to be delivered by the Developer to the Enterprises pursuant to the Project Agreement for the disbursement of the corresponding payment from the Enterprises to the Developer under the Project Agreement, and (c) any failure of the Developer to pay any such payment to the O&M Contractor shall not constitute a breach or default by the Developer under this Agreement to the extent resulting from the failure by the Enterprises to make the corresponding payment to the Developer under the Project Agreement at the time and in the amounts contemplated by the Project Agreement, and the O&M Contractor fully assumes the risk of non-payment by the Enterprises to the Developer for any such payment owed by the Developer to the O&M Contractor under this Agreement, in each case except where such failure by the Enterprises arises as a consequence of a Developer Default.
- 12.6.3 Except as provided otherwise in this agreement, the O&M Contractor shall have no separate right to claim against the Developer, and the Developer accepts no liability towards the O&M Contractor for any payment obligation of the

Developer that is subject to the Pay-if-Paid Provisions. Following an agreement or determination in accordance with the dispute resolution provisions of the Project Agreement or this Agreement, as the case may be, in respect of a claim, the O&M Contractor shall be conclusively deemed to have waived any rights under this Agreement to payment in respect of such claim in excess of those arising from such agreement or determination.

- 12.6.4 The O&M Contractor acknowledges that it is familiar with Section 11, Section 22, Section 33, and Part 3 of Schedule 6 of the Project Agreement and, except as provided otherwise in this Agreement, accepts the risk of any nonpayment of any amounts payable by the Developer hereunder for which the Enterprises is responsible or for which the Developer's obligation to pay is subject to the Pay-if-Paid Provisions.
- 12.7 If the Developer disagrees with any amount payable in connection with a O&M Payment Application submitted by the O&M Contractor, then, without prejudice to the O&M Contractor's rights to have the disagreement determined under the Dispute Resolution Procedure, the Developer will without delay:
- 12.7.1 advise the O&M Contractor of the reasons for the disagreement; and
- 12.7.2 provide to the O&M Contractor notice of the amount that the Developer determines is correct (which, for greater certainty, may be zero).
- 12.8 Subject to Part 1, Article 12.4 and the other rights of the Developer under this Agreement to set-off or withhold payment, within 30 days of the date of the O&M Payment Application, the Developer will satisfy the amount set forth on the O&M Payment Application by way of cash payment.
- 12.9 Any amount payable under this Agreement and not paid when it becomes due shall bear interest at 2.0% over the Prime Rate, without compounding, from the due date of the amount payable until the date (or dates) of payment.
- 12.10 Within 45 days after the end of each Contract Year, the O&M Contractor shall provide to the Developer an annual settlement statement (the "**Annual Settlement Statement**") setting forth the actual aggregate O&M Fee payable with respect to such Contract Year and a reconciliation of such amount with the amounts actually paid by the Developer with respect to such Contract Year. The Developer or the O&M Contractor, as applicable, shall, subject to the Pay-if-Paid Provisions, pay all known and undisputed amounts within 60 days after receipt or delivery of the Annual Settlement Statement. If any amount is then in dispute or is for other reasons not definitely known at the time the Annual Settlement Statement is due, the Annual Settlement Statement shall identify the subject matter and reasons for such dispute or uncertainty and, in cases of uncertainty, shall include a good faith estimate by the O&M Contractor of the amount in question. When the dispute is resolved or the amount otherwise finally determined, the O&M Contractor

shall file with the Developer an amended Annual Settlement Statement which shall, in all other respects, be subject to this Part 1, Article 12.10.

13. Interface with Construction Contractor

13.1 On the execution and delivery of this Agreement, the O&M Contractor shall enter into the Interface Agreement.

13.2 The O&M Contractor shall:

13.2.1 subject to compliance by the Developer, the Construction Contractor, and the Subcontractors, as applicable, with (i) the health and safety rules and instructions of the O&M Contractor, and (ii) the work coordination schedule determined by the O&M Contractor, permit the Developer, the Construction Contractor and the other Subcontractors to carry out their work;

13.2.2 fully cooperate with the Developer, the Construction Contractor and the other Subcontractors, and provide assistance and information as may be needed, so as to avoid disruptions and in order to facilitate the timely performance by all parties of their respective obligations under the Project Agreement, the Construction Contract, or Subcontract, as applicable; and

13.2.3 carefully coordinate and interface the O&M Activities with the work and services carried out or to be carried out by the Developer, the Construction Contractor and the other Subcontractors.

13.3 Where the O&M Contractor is liable to make a payment to the Developer (including, without limitation, by way of indemnity), the O&M Contractor shall not be entitled to withhold, reduce or avoid any such payment in reliance only on the fact that the Developer is entitled to recover some or all of such amount from the Construction Contractor.

13.4 Notwithstanding any other provision of this Agreement, the Developer shall have no obligations and shall not be liable, whether in contract, tort or otherwise, to the O&M Contractor for any act or omission of the Construction Contractor or any other Construction Contractor-Related Entity.

14. Notices

14.1 All notices, consents, approvals or written communications given pursuant to the terms of this Agreement will be in writing and will be considered to have been sufficiently given if delivered by hand or transmitted by facsimile or electronic transmission to the address, facsimile number or electronic mail address of each party set forth below in this Section, or to such other address, facsimile number or electronic mail address as any party may, from time to time, designate in the manner set forth above. Any such notice or communication will be considered to have been received:

- 14.1.1 if delivered by hand during business hours (and in any event, at or before 5:00 pm local time in the place of receipt) on a Working Day, upon receipt by a responsible representative of the receiver, and if not delivered during business hours, upon the commencement of business hours on the next Working Day;
- 14.1.2 if sent by facsimile transmission during business hours (and in any event, at or before 5:00 pm local time in the place of receipt) on a Working Day, during business hours, upon the commencement of business hours on the next Working Day following confirmation of the transmission; and
- 14.1.3 if delivered by electronic mail during business hours (and in any event, at or before 5:00 pm local time in the place of receipt) on a Working Day, upon receipt, and if not delivered during business hours, upon the commencement of business hours on the next Working Day.

- 14.1.4 Notices required to be given to the Developer shall be addressed as follows:

Kiewit Meridiam Partners LLC
160 Inverness Drive West, Suite 110
Englewood, Colorado 80112
Attention: Christopher Hodgkins
Email: I70E@meridiam.com
Telephone No.: (212) 798-8686

- 14.1.5 Notices required to be given to the O&M Contractor shall be addressed as follows:

Roy Jorgensen Associates, Inc.
3735 Buckeystown Pike,
Buckeystown MD 21717
Attention: Douglas Selby
Email: doug_selby@royjorgensen.com
Telephone No.: (301) 831-1000

15. Miscellaneous

- 15.1 The completion of the O&M Activities shall be concurrent with and accomplished in the manner set forth respecting inspections and completions under the Project Agreement.
- 15.2 Without limiting and in addition to all other obligations to mitigate required of the Parties under this Agreement, the Interface Agreement or the Lenders' O&M Direct Agreement, or at law or in equity, in all cases where a party is entitled to receive from the other party (including, without limitation, in the case of the O&M Contractor, pursuant to the provisions relating to Equivalent Project Relief) any compensation, losses or other relief, the party so entitled will use all reasonable efforts and all due diligence to mitigate and

reduce the amount required to be paid by the other party and the length of the extension of time or the extent of other relief.

[The remainder of this page intentionally left blank; signature page immediately follows.]

Central 70 Project

Maintenance Contract

IN WITNESS whereof this Agreement has been executed by the parties and delivered on the date first stated above.

KIEWIT MERIDIAM PARTNERS LLC

By: 
Name: John Dionisio
Title: Authorized Person

ROY JORGENSEN ASSOCIATES, INC.

By: _____
Name: Charles E. Henningsgaard
Title: Senior Vice President

IN WITNESS whereof this Agreement has been executed by the parties and delivered on the date first stated above.

KIEWIT MERIDIAM PARTNERS LLC

By: _____

Name: John Dionisio

Title: Authorized Person

ROY JORGENSEN ASSOCIATES, INC.

By:  _____

Name: Charles E. Henningsgaard

Title: Senior Vice President



Maintenance Contract for the Central 70 Project

Part 2

**KIEWIT MERIDIAM PARTNERS LLC
AND
ROY JORGENSEN ASSOCIATES, INC.**

Dated November 21, 2017

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PART A: DEFINITIONS AND ABBREVIATIONS; INTERPRETATION; PROJECT INFORMATION

1. DEFINITIONS AND ABBREVIATIONS

Except as otherwise specified herein or as the context may otherwise require:

- a. terms set out in Part A of Annex A (*Definitions and Abbreviations*) have the respective meanings set out therein for all purposes of this Agreement;
- b. terms defined in either the CDOT Standard Specifications or the Standard Special Provisions have the respective meanings set out in the CDOT Standard Specifications and the Standard Special Provisions for purposes of the Construction Standards, provided that, if any term used in any Construction Standard is defined in both:
 - i. Part A of Annex A (*Definitions and Abbreviations*); and
 - ii. either the CDOT Standard Specifications or the Standard Special Provisions,then such term shall have the meaning set out in Part A of Annex A (*Definitions and Abbreviations*); and
- c. abbreviations set out in Part B of Annex A (*Definitions and Abbreviations*) are provided as references for purposes of the Technical Requirements, Table 6A.1 and Table 6A.2 only.

2. INTERPRETATION OF THIS AGREEMENT

2.1. Interpretation of Certain Terms, Phrases and Language

2.1.1. Headings and other internal references

- a. Headings are inserted for convenience only and shall not affect interpretation of this Agreement.
- b. Except as the context may otherwise provide, the words “herein”, “hereof” and “hereunder”, and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision of it.
- c. Except as otherwise expressly provided or as the context may otherwise provide, a reference to any Section within this Agreement (including in Part A of Annex A (*Definitions and Abbreviations*) and the Schedules) is a reference to such Section of this Agreement (excluding the Schedules).
- d. Any reference to “Part X, Section Y of the O&M Contract” (where “X” and “Y” are numbers) in any Schedule is a reference to the corresponding numbered Part and Section in this Agreement (including Annex A (*Definitions and Abbreviations*), but excluding the Schedules).

2.1.2. Common terms and references

- a. The singular includes the plural and vice versa.
- b. Words preceding “include”, “includes”, “including” and “included” shall be construed without limitation by the words that follow.
- c. The verb “will” has the same meaning and effect as the verb “shall.”
- d. The word “promptly” means as soon as reasonably practicable in light of then-prevailing circumstances.

2.1.3. References to agreements, documents, Law, Governmental Approvals and Permits

Except as otherwise expressly provided in this Agreement, and subject to Part 2, Section 8.6.2 with respect to the Project Standards, a reference:

- a. to an agreement or other document shall be construed to be a reference to such agreement or other document (including any schedules, annexes or exhibits thereto) as it may be amended, modified or supplemented from time to time pursuant to its terms; and
- b. to any Law, Governmental Approval or Permit shall be construed as a reference to such Law, Governmental Approval or Permit as amended, replaced, consolidated or re-enacted (as applicable) from time to time.

2.1.4. References to Persons

Except as otherwise expressly provided in this Agreement:

- a. a reference to a Person includes such Person's permitted successors, assigns and transferees;
- b. the feminine includes the masculine and vice-versa; and
- c. the words "they", "them", "themselves" and "their" when used to refer to a single Person or a grammatically singular antecedent shall be construed to mean an individual of unknown gender or whose gender is irrelevant.

2.1.5. Professional language and terms of art

Except as otherwise expressly provided in this Agreement:

- a. words and phrases not otherwise defined herein:
 - i. that have well-known technical, insurance or construction industry meanings shall be construed pursuant to such recognized meanings; and
 - ii. of an accounting or financial nature shall be construed pursuant to GAAP, in each case taking into account the context in which such words and phrases are used;
- b. all statements of, or references to, dollar amounts or money, including references to "\$" and "dollars", are to the lawful currency of the United States of America;
- c. all references to "digital" or "electronic" media or communications shall include all technology or services having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities that are used to facilitate the storage or dissemination of data and information as of the Setting Date, and all other successor forms of technology that serve the same or equivalent purposes which come into existence or widespread use after the Setting Date; and
- d. all references to reimbursement of another Person's "cost and expense" or "costs and expenses" shall be deemed to be references to reimbursement of all relevant third-party fees, costs and expenses incurred by such Person, including for those of external legal counsel and other external advisors.

2.1.6. Deadlines occurring on Calendar Days

Whenever this Agreement requires either Party to make any payment, or provide or deliver any Acceptance, Approval, consent, approval or like assent, notice, Deliverable, comment or any information or material, or otherwise complete any action or performance, in each case on or no later than a date that is a Calendar Day that is not also a Working Day, then such deadline shall automatically be extended to the next Working Day to occur after such Calendar Day.

2.2. Terminology for Agreements and Assents

2.2.1. Agreements and determinations

Where this Agreement provides that a matter shall be “Agreed or Determined”, such reference shall mean either that:

- a. the Parties have agreed to the matter in writing; or
- b. that the matter has been finally determined pursuant to the Dispute Resolution Procedure.

2.2.2. Consents, approvals and like assents

Except as otherwise expressly provided in this Agreement and subject to Part 2, Section 2.2.4, where this Agreement provides that any consent, approval or like assent:

- a. shall not be “unreasonably withheld” by a Person, then it shall not be unreasonably withheld, delayed or made subject to the imposition of unreasonable conditions by such Person, and “unreasonably withhold” shall be similarly construed; and
- b. is to be made or given in the “discretion” of a Person, it shall be made or given only in the sole and absolute discretion of such Person (which discretion includes the ability to refrain from giving, or to impose conditions on, such consent, approval or like assent), which discretionary decision regarding any consent, approval or like assent shall be final and binding and not subject to the Dispute Resolution Procedure other than with respect to:
 - i. a good faith dispute concerning whether the consent, approval or like assent was discretionary; or
 - ii. a breach of the implied covenant of good faith and fair dealing.

2.2.3. Acceptance, Approval and Information

The O&M Contractor acknowledges and accepts that where this Agreement provides that any matter or information shall be submitted to the Enterprises (or to CDOT acting as their designee pursuant to Section 18.1.2 of the Project Agreement) for their Acceptance, Approval or Information, the Enterprises shall be entitled to make their determination with respect to such matter or information in accordance with Section 2.2.3 of the Project Agreement.

Where this Agreement provides that any matter or information shall be submitted to the Developer for its:

- a. “Acceptance”, then the Developer shall give its determination in writing and may not unreasonably withhold its Acceptance, after having reasonably sufficient opportunity, which shall not be less than 30 Calendar Days, to review and comment on such submission, where the only bases for withholding such Acceptance shall be if:
 - i. the Enterprises has withheld its Acceptance of the equivalent matter or information pursuant to Section 2.2.3 of the Project Agreement; or
 - ii. the Developer determines, acting reasonably, that the subject-matter of such submission:
 - A. does not comply with this Agreement;
 - B. does not comply with any Law, Governmental Approval or Permit;
 - C. is not made pursuant to, or otherwise is not compliant with, Good Industry Practice;
 - D. would give rise to a material risk to the health or safety of any person, the Environment or Improvements, the community or property; and/or
 - E. would have an adverse impact on:
 - I. the performance by the O&M Contractor of its obligations under this Agreement;

- II. the rights of the Developer under this Agreement; and/or
- III. the Project,

(where any failure to respond within a time period expressly provided in this Agreement shall be deemed an Acceptance of such submission by the Developer);

- b. “Approval”, then the Developer shall give their determination in writing and may reject such submission in its discretion (where any failure to respond within a time period expressly provided in this Agreement shall be deemed a rejection of such submission by the Developer), provided that when the Enterprises exercise their discretion, grant or refuse to grant an approval, accept or refuse to accept a request or makes a determination under the Project Agreement, then the Developer will exercise its discretion, judgment, grant or refuse to grant an approval, accept or refuse to accept a request or make a determination in a manner consistent with the discretion exercised, approval granted or refused, request accepted or refused or determination made by the Enterprises under the Project Agreement; and
- c. “Information”, then no Acceptance, Approval, or other consent, approval or like assent, is required and the matter or information is being submitted for the Developer’s information, review and comment only.

2.2.4. Default standards for consents, approvals and like assents; consents on equivalent matters

Unless indicated to the contrary, all determinations, consents or approvals of the Developer shall not be unreasonably withheld, conditioned or delayed; however, the Developer shall not be deemed to have unreasonably withheld, conditioned or delayed any determination, consent or approval on any matter in circumstances where the Enterprises have withheld their determination, consent or approval to any equivalent matter under the Project Agreement. The O&M Contractor acknowledges and agrees that where, under this Agreement, any determination, consent or approval is required from the Developer, it shall be legitimate for the Developer in considering whether to make such determination, consent or approval to take into account any determination, consent or approval which the Developer, in turn, would need to obtain from the Enterprises under the Project Agreement.

2.2.5. Limited O&M Contractor reliance

- a. The O&M Contractor acknowledges Section 2.2.5.a of the Project Agreement and accepts that it may rely on Acceptances and Approvals, any other consent, approval or like assent, and any notice, from the Developer or which are passed on by the Developer to the O&M Contractor from the Enterprises (including from CDOT acting as the Enterprises’ designee pursuant to Section 18.1.2 of the Project Agreement) only for the limited purpose of establishing that the Acceptance or Approval, or any other consent, approval or like assent, occurred, or any notice was given.
- b. The O&M Contractor acknowledges Section 2.2.5.b of the Project Agreement. Except as otherwise expressly provided in this Agreement, no:
 - i. Acceptance or Approval, other consent, approval or like assent, or notice;
 - ii. comment, review, certification, concurrence, verification or oversight; or
 - iii. payment,or the absence of any of the foregoing, shall in any case:
 - iv. constitute acceptance of materials, O&M Work After Construction or any Element as satisfying the requirements of this Agreement;
 - v. relieve the O&M Contractor from, or diminish the O&M Contractor’s liability for, the performance of its obligations under this Agreement;

- vi. prevent the Developer from subsequently exercising its rights under this Agreement or the Enterprises from exercising their rights under the Project Agreement without being bound by the manner in which they previously exercised (or refrained from exercising) such rights; or
- vii. constitute a waiver of any rights (i) under this Agreement of any legal or equitable right of the Developer or of any other Person or (ii) under the Project Agreement of any legal or equitable right of the Enterprises or of any other Person.

2.3. Indexation of Amounts

2.3.1. Contract Year Indexation

Where in this Agreement an amount is expressed to be “indexed”, such expression means that the relevant amount will be changed on the first Calendar Day of each Contract Year (the “Relevant Contract Year”) by applying the following formula:

$$V_{new}=V_{old} \times (1 + (I_{new}-I_{old})/I_{old})$$

Where:

- a. V_{new} is the new amount for the Relevant Contract Year;
- b. V_{old} is the amount for the Contract Year immediately preceding the Relevant Contract Year;
- c. I_{new} is the value for CPI most recently published prior to the first Calendar Day of the Relevant Contract Year; and
- d. I_{old} is the value for CPI most recently published prior to the first Calendar Day of the Contract Year immediately prior to the Relevant Contract Year, or, in the case of the first occasion on which this calculation is carried out, the value of CPI most recently published prior to July 1, 2017,

provided that, if I_{new} is less than or equal to I_{old} , then no calculation shall be carried out and V_{new} shall be deemed to be equal to V_{old} .

2.3.2. For purposes of:

- a. the definitions of Base Benchmarked Insurance Cost and Proposal Insurance Cost in Part A of Annex A (Definitions and Abbreviations); and
- b. Section 2.8.b of Schedule 13 (Required Insurances),

references to “Contract Years” in Part 2, Section 2.3.1 shall be deemed to refer to the corresponding annual period referred to in such definitions or, as applicable, multi-year periods referred to in Section 2.8.b of Schedule 13 (Required Insurances).

2.4. Resolution of Conflicts Among, and Prioritization of, Terms

2.4.1. Integrated and binding agreement

- a. Subject to Part 2, Section 42.3, the Developer and the O&M Contractor agree and expressly intend that this Agreement, which includes Part 1, this Part 2 and its Annex, Schedules and Attachments, and any valid amendments, constitutes a single, non-severable, integrated agreement whose terms are interdependent and non-divisible.
- b. Subject to Part 2, Sections 2.4.2 and 2.4.3 and the express terms of this Agreement, any term, condition, requirement, criteria or specification set out or referenced in any part of this Agreement is a binding contractual obligation.

2.4.2. Standards for resolving conflicts and inconsistencies

- a. If there is any conflict, ambiguity or inconsistency between or among any provision(s) of (A) this Agreement (including Annex A (*Definitions and Abbreviations*), but excluding the Schedules) and/or (B) any provision(s) of the Schedules and/or (C) any provision(s) of the Project Standards, in each case that cannot be reconciled by reading all relevant provisions of this Agreement, the Schedules and/or the Project Standards as mutually explanatory of one another, then the order of precedence shall be as follows:
- i. Part 1 of this Agreement shall prevail over Part 2 of this Agreement, any of the Schedules and any of the Project Standards;
 - ii. Part 2 of this Agreement (including Annex A (*Definitions and Abbreviations*) but excluding the Schedules to this Agreement) shall prevail over any of the Schedules and any of the Project Standards;
 - iii. Schedule 17 (*Environmental Requirements*) shall prevail over any other Schedule and any of the Project Standards;
 - iv. subject to Part 2, Section 2.4.2.a.iii, Schedules 3 (*Commencement and Completion Mechanics*), 4 (*Payments*), 6 (*Performance Mechanism*), 8 (*Project Administration*), and 9 (*Submittals*) shall prevail equally over all remaining Schedules;
 - v. Intentionally Omitted;
 - vi. subject to Part 2, Sections 2.4.2.a.iii, iv, and v, all Schedules (including the Project Special Provisions) shall prevail equally over any of the Project Standards (excluding the Project Special Provisions); and
 - vii. the Project Agreement.

provided that:

- viii. if there is any conflict, ambiguity or inconsistency between or among any provision(s) of the Construction Standards, the order of precedence set out in Section 105.09 of the CDOT Standard Specifications shall apply;
- ix. Changes made pursuant to any Change Order or Directive Letter and amendments made pursuant to Part 2, Section 43.1 shall prevail over such portions of this Agreement that they modify or amend;
- x. in the event of any conflict, ambiguity or inconsistency between or among the provisions of this Agreement (including, for certainty, the Schedules) with an equal order of precedence, the most stringent requirement shall take precedence;
- xi. notwithstanding anything to the contrary contained in this Agreement, in the event of any conflict, ambiguity or inconsistency between or among any applicable requirement under Law and any other requirement of this Agreement, the applicable requirement under Law shall take precedence;
- xii. except where expressly referred to in this Agreement, the Financial Model and its contents shall not be used to interpret this Agreement and shall not otherwise affect the meaning of this Agreement; and
- xiii. additional or supplemental requirements that the O&M Contractor is required to comply with pursuant to this Agreement (including such requirements pursuant to any of the Project Standards) with a lower order of precedence relative to other parts of this Agreement (including, for certainty, the Schedules) as determined pursuant to this Part 2, Section 2.4.2 shall be given effect except to the extent such requirements conflict or are inconsistent with, or otherwise create an ambiguity in relation to, the provisions contained in a part of this Agreement with a higher order of precedence.

- b. [Reserved.]

2.4.3. Interpretation and resolution of conflicts

- a. Each Party shall notify the other Party promptly after it identifies or becomes aware of any conflict, ambiguity or inconsistency:
 - i. of a type described in Part 2, Section 2.4.2;
 - ii. between or among any Deliverable and the provisions of this Agreement and/or the Project Standards; or
 - iii. regarding the interpretation of any Deliverable,

and, to the extent such conflict, ambiguity or inconsistency arises from a conflict with the Project Agreement, the Developer will, upon giving or receipt of such notice, notify the Enterprises of such conflict, ambiguity or inconsistency.

Each Party agrees to not take advantage of any such conflict, ambiguity or inconsistency, or of any other error or omission in or to this Agreement. Furthermore, in the event of any such conflict, ambiguity or inconsistency, the Parties agree that the relevant terms of this Agreement shall not be construed against the Person that prepared them and the Parties waive any Law with contrary effect which would otherwise be applicable in connection with the construction and interpretation of this Agreement.

If any conflict, ambiguity or inconsistency arises under this Agreement and there is a corresponding conflict, ambiguity or inconsistency under the Project Agreement, then pursuant to the Project Agreement, if such conflict, ambiguity or inconsistency is of a type described in Section 2.4.3.a.ii of the Project Agreement and relates to a Technical Deliverable, the Enterprises shall, in their discretion, notify Developer of their determination regarding such reconciliation. The Developer shall provide a copy of any such determination received from the Enterprises respecting the reconciliation of such conflict, ambiguity or inconsistency, and the determination of the Enterprises shall be binding on the Parties hereunder. To the extent that the O&M Contractor disagrees with the Enterprises determination, then to the extent that the Developer is permitted to dispute such determination in accordance with Section 2.4.3.b of the Project Agreement, the O&M Contractor shall be entitled to submit an Equivalent Claim Notice pursuant to Part 1, Article 6.2.

- b. If any conflict, ambiguity or inconsistency arises under this Agreement and there is no corresponding conflict, ambiguity or inconsistency under the Project Agreement, then to the extent such relates to a Technical Deliverable, the Developer may, in its reasonable discretion, notify the O&M Contractor of its determination, as evaluated in its good faith discretion, regarding such reconciliation, which determination shall be binding on the Parties hereunder.

3. PROJECT INFORMATION, RELIANCE AND DILIGENCE

3.1. Limited Reliance on Project Information

The O&M Contractor acknowledges and agrees that:

- a. prior to the Final Project Information Date, the Reference Documents (including, for certainty, the Reference Design) and certain other documents, information, reports and materials (together, the "Project Information") were made available to the O&M Contractor for information;
- b. prior to the Agreement Date, the O&M Contractor conducted its own due diligence on the accuracy, completeness, relevance, fitness for purpose and adequacy of the Project Information;

- c. the Reference Documents have not been incorporated into this Agreement as a result of being listed in Schedule 29 (*Reference Documents*) to the Project Agreement or as a result of being referenced in any provision of this Agreement that requires the O&M Contractor to comply with a specific Reference Document (or part thereof); and
- d. neither the Enterprises under the Project Agreement, the Developer, nor any other Person that produced or provided any Project Information, gives or has given any representation, warranty, undertaking or guarantee as to the accuracy, completeness, relevance, fitness for purpose or adequacy of any Project Information, and as such:
 - i. the O&M Contractor is not entitled to rely on any Project Information, except with respect to any Reference Document, to the extent such Reference Document is either expressly or implicitly and necessarily the basis for determining the occurrence of a Supervening Event or whether any risk, information, matter or thing was Known or Knowable; and
 - ii. subject to Part 2, Section 3.4, neither the Developer nor any other Person that produced or provided any Project Information, shall have any responsibility or liability to the O&M Contractor or any other O&M Contractor-Related Entity in respect of, and the O&M Contractor shall not be relieved of any obligation under this Agreement as a result of:
 - A. any lack of accuracy, utility, completeness, relevance, fitness for purpose or adequacy of any kind whatsoever of any such Project Information;
 - B. any interpretations of, or conclusions drawn from, any such Project Information;
 - C. any failure by the Developer or by any other Person that produced or provided any such Project Information, to update such Project Information, the contents of which may reflect information available as of the date that such Project Information was prepared or as of such other date indicated therein;
 - D. any failure by the Developer or any other Person to reference or otherwise make available any materials, documents, drawings, plans or other information relating to the Project; or
 - E. any causes of action or claims of, or Losses whatsoever suffered by, the O&M Contractor or any other O&M Contractor-Related Entity by reason of any use of, or any action or forbearance in reliance on, such Project Information.

3.2. Responsibility for Independent Diligence

3.2.1. Sufficient diligence

Subject to the terms of this Agreement, the O&M Contractor is deemed to have satisfied itself as to:

- a. the sufficiency and (as applicable) condition of the Right-of-Way, the ROD Construction Limits and the Project License, and of all other property, assets and rights that the O&M Contractor is entitled to receive under this Agreement;
- b. the nature and extent of the risks assumed by it under this Agreement;
- c. the sufficiency of the O&M Contractor-Related Entities' opportunities to conduct due diligence, including in relation to the condition of each ROW Parcel, on or prior to the Setting Date pursuant to Good Industry Practice; and
- d. the precautions and times and methods of working necessary to prevent or, if it is not possible to prevent, to mitigate or reduce any nuisance or interference, whether public or private, being caused to any third parties through the performance of the Work.

3.2.2. No reliance on unincorporated statements or representations and warranties

The O&M Contractor acknowledges and agrees that:

- a. it has not entered into this Agreement on the basis of, and has not relied upon, any statement, representation or warranty or other provision (in each case whether oral or written, express or implied) made or agreed to by the Developer or by any other Person, or any of their agents or employees, except those expressly set out or repeated in this Agreement; and
- b. the only remedies available in respect of any untrue statement, misrepresentation or breach of warranty made to the O&M Contractor in this Agreement shall be any remedies expressly available under this Agreement and in all cases subject to Equivalent Project Relief.

3.3. Limitations on Site Condition Claims

Neither the O&M Contractor nor any other O&M Contractor-Related Entity shall be entitled to make any Claim against any Person in relation to the condition of any ROW Parcel or any Additional ROW Parcel at the time such parcel first became subject to the O&M Contractor's Possession or the O&M Contractor first acquired any interest or right in respect of such parcel, except that the O&M Contractor may, to the extent that the Developer is entitled to bring a corresponding Claim pursuant to Section 3.3 of the Project Agreement, submit an Equivalent Claim Notice pursuant to Part 1, Article 6.2.

3.4. Residual Developer Liability

Nothing in this Part 2, Section 3 shall exclude any liability which the Developer would otherwise have to the O&M Contractor:

- a. in respect of any statements, representations or warranties made fraudulently, recklessly or in bad faith or constituting willful misconduct or gross negligence; or
- b. to the extent expressly provided for in this Agreement.

PART B: EFFECTIVENESS AND TERM; REPRESENTATIONS AND WARRANTIES; FINANCIAL CLOSE; GRANT OF RIGHTS

4. EFFECTIVENESS AND TERM

4.1. Effectiveness

This Agreement shall come into effect when (a) both the Developer and the O&M Contractor have executed this Agreement, and (b) the Project Agreement is in full force and effect, and shall, subject to Part 2, Section 33 continue thereafter until the O&M Termination Date (such period, the “O&M Term”).

4.2. Extension

By written agreement between the Developer and the O&M Contractor, this Agreement may be renewed for an additional period of time to be agreed upon by the Developer and the O&M Contractor, contingent upon satisfactory performance of the O&M Contractor and other factors as determined by the Developer in its sole discretion.

4.3. Enterprises’ O&M Direct Agreement

On the execution and delivery of this Agreement, the O&M Contractor shall execute and deliver to the Developer the Enterprises’ O&M Direct Agreement.

5. REPRESENTATIONS AND WARRANTIES

5.1. Representations and Warranties

5.1.1. The O&M Contractor hereby represents and warrants to the Developer that each representation and warranty set out in Part A of Schedule 2 (Representations and Warranties) is true and correct as of the Agreement Date.

5.1.2. The Developer hereby represents and warrants to the O&M Contractor that each representation and warranty made by it and set out in Part B of Schedule 2 (Representations and Warranties) is true and correct as of the Agreement Date.

5.2. Mutual Reliance

The O&M Contractor and the Developer acknowledge that, respectively, the Developer and the O&M Contractor enter into this Agreement in reliance on the representations and warranties made pursuant to Part 2, Section 5.1.

5.3. Notice of Untrue, Incorrect or Misleading Representations and Warranties

Notwithstanding that the representations and warranties made by the Parties pursuant to Part 2, Section 5.1 are made only at particular times:

- a. the O&M Contractor shall promptly inform the Developer after it becomes aware that any of its representations and warranties either was false, misleading or inaccurate in any material respect when made (or repeated) or omitted material information when made (or repeated); and
- b. the Developer shall promptly inform the O&M Contractor after it becomes aware that any of the representations and warranties made by it either was false, misleading or inaccurate in any material respect when made (or repeated) or omitted material information when made (or repeated).

5.4. Special Remedies for Mutual Breach of Warranty

If any circumstance or event exists or occurs that constitutes or results in concurrent breaches of any of the parallel representations and warranties made pursuant to Part 2, Section 5.1 by the

O&M Contractor and the Developer, but which breaches do not also constitute or result in any other breach or default by either Party, including, subject to the passage of time and giving of notice, an O&M Contractor Default or a Developer Default, then:

- a. such breaches shall not result in a Supervening Event or form the basis for a damages claim by either Party against the other; and
- b. each Party's only remedy shall be to:
 - i. take action as permitted under this Agreement to rectify or mitigate the effects of such circumstance or event;
 - ii. if applicable, exercise its rights to pursue severance and/or substitution of any invalid clause, condition, term, provision, section, subsection or part of this Agreement pursuant to Part 2, Section 42.3;
 - iii. Intentionally Omitted; and/or
 - iv. exercise its rights pursuant to Part 2, Section 43.3.

5.5. Survival of Representations and Warranties

Pursuant to Part 2, Section 41, each Party's liability with respect to its representations and warranties made pursuant to Part 2, Section 5.1, or thereafter repeated pursuant to this Agreement, shall survive the end of the O&M Term.

6. FINANCIAL CLOSE

6.1. Financial Close Assistance

The O&M Contractor acknowledges the Developer's obligations pursuant to Section 6.1 of the Project Agreement and that the Developer will enter into certain Financing Documents, which will provide (amongst other things) that the Developer shall provide certain documents and satisfy certain conditions precedent as a condition to the provision of the financing thereunder. During the period from the Agreement Date to Financial Close, the O&M Contractor shall cooperate with the Developer to provide such assistance and information as is necessary to satisfy any conditions precedent to Financial Close that are within the control of the O&M Contractor, including without limitation:

- a. providing such information relating to the technical aspects of the O&M Work After Construction or this Agreement as reasonably requested by the Developer to finalize any due diligence required to achieve Financial Close;
- b. participating in discussions with Lenders and/or rating agencies relating to any obligations of the O&M Contractor under this Agreement or the Interface Agreement as reasonably requested by the Developer;
- c. participating in any road-show with potential investors required in connection with any Bond Financing with regard to the Project;
- d. negotiating, finalizing and, on or before the TIFIA Effective Date, executing the Lenders' O&M Direct Agreement;
- e. providing such information and certifications in respect of the O&M Contractor, the O&M Activities or the terms of this Agreement as may be reasonably requested by Developer to comply with any reasonable request of the Lenders, including providing a certificate, in form and substance reasonably acceptable to the Lenders and counsel to the Lenders, from the O&M Contractor with respect to references to such entities in any offering documents relating to any Bond Financing with regard to the Project or in any other Financing Documents;
- f. providing customary legal opinions addressed to the Developer and the Lenders from external legal counsel as to:

- i. organization, existence, power and authority of the O&M Contractor;
 - ii. due authorization, execution and delivery of the this Agreement, the Enterprises' O&M Direct Agreement and the Lenders' O&M Direct Agreement;
 - iii. enforceability of this Agreement, the Enterprises' O&M Direct Agreement and the Lenders' O&M Direct Agreement;
 - iv. no violation of law, court orders, judgments or decrees or of the O&M Contractor's organizational documents with respect to this Agreement, the Enterprises' O&M Direct Agreement and the Lenders' O&M Direct Agreement;
 - v. the absence of material litigation in respect of the O&M Contractor; and
 - vi. no Governmental Approvals or other actions are required for the execution, delivery and performance of this Agreement, the Enterprises' O&M Direct Agreement and the Lenders' O&M Direct Agreement, except as have already been obtained or made, as applicable; and
- g. providing any other deliverables reasonably required by Developer as a condition precedent to Financial Close which relate to the O&M Contractor, this Agreement or the Interface Agreement.

6.2. Bring-Down of O&M Contractor Representations and Warranties at Financial Close

- 6.2.1. On each of the TIFIA Effective Date and the date of Financial Close, the O&M Contractor shall execute and deliver to Developer a certificate repeating the O&M Contractor representations and warranties in Part A of Schedule 2 (*Representations and Warranties*) as of such date. Failure to execute and deliver such certificate shall be an O&M Contractor Default hereunder.
- 6.2.2. The O&M Contractor hereby represents and warrants to the Developer that each representation and warranty set forth in Schedule 29 (*TIFIA Representations and Warranties*) is true and correct as of (a) the TIFIA Effective Date, (b) the Bonds Closing Date and (c) each date on which any disbursement of the TIFIA Loan is made.

6.3. Failure to Achieve Financial Close

- 6.3.1. The failure to achieve Financial Close by the Financial Close Deadline due to the failure of the O&M Contractor to perform its obligations under this Part 2, Section 6 shall be considered an O&M Contractor Default (for which the Developer may give notice and terminate this Agreement).

6.4. O&M Contract Amendment

On the Financial Close Date, the O&M Contractor and the Developer shall enter into the O&M Contract Amendment.

7. PROJECT LICENSE

7.1. Intentionally Omitted

7.2. O&M Contractor's Project License

7.2.1. Grant of Project License

- a. Subject to the terms and conditions of this Agreement:
 - i. the Developer grants to the O&M Contractor a license (the "Project License") over, under, upon and in the Right-of-Way, and any Additional Right-of-Way, for the sole purpose of exercising its rights and performing its obligations under this Agreement on the same terms and conditions and to the same extent that the Developer is granted a license from the Enterprises pursuant to Section 7 of the Project Agreement; and
 - ii. the O&M Contractor acknowledges and accepts such Project License.

- b. Without limiting the O&M Contractor's conditional, limited rights to obtain early access to and use of (but, for certainty, not Possession of) ROW Parcels pursuant to Section 1.2 of Schedule 18 (Right-of-Way), to the extent of the Developer's rights under the Project Agreement the Developer shall deliver, and the O&M Contractor shall be entitled to have, Possession of:
 - i. each ROW Parcel on and from the Possession Date specified in the Notice of Possession with respect to such ROW Parcel until such ROW Parcel's Project License End Date; and
 - ii. any Additional ROW Parcel on and from the Possession Date specified in the Notice of Possession with respect to such Additional ROW Parcel until such Additional ROW Parcel's Project License End Date,

without prejudice to O&M Contractor's rights arising as a result of the occurrence of any Compensation Event as described in paragraph b. of the definition thereof in Part A of Annex A (Definitions and Abbreviations) and, for certainty, subject to such rights and restrictions of access and use of certain third parties that fall within the definition of Possession in Part A of Annex A (Definitions and Abbreviations) from time to time during the O&M Term.

- c. The Project License shall automatically be revoked upon the occurrence of the end of the O&M Term.
- d. The O&M Contractor acknowledges and agrees that pursuant to Section 7.2.1.d of the Project Agreement, the Enterprises are entitled to terminate the Developer's Project License with respect to the ROW Parcels (or any part thereof) on which the Maintenance Yard is located, provided that any such termination shall not be effective prior to the Final Acceptance Date. The O&M Contractor shall have the right to participate in discussions with the Enterprises with respect to any such termination of the Developer's Project License if such termination impacts the O&M Contractor's obligations under this Agreement, to the extent permitted by the Enterprises pursuant to the Project Agreement. If any portion of the Developer's Project License is terminated pursuant to Section 7.2.1.d of the Project Agreement, the O&M Contractor's Project License shall be terminated to the same extent.

Following any such termination pursuant to this Part 2, Section 7.2.1.d, the O&M Contractor shall, without limiting its other obligations under this Agreement, cooperate and coordinate with the transfer of such ROW Parcels (or any part thereof) to the Developer or any other Person designated by the Developer. The O&M Contractor shall not be entitled to any compensation, extension of time and/or relief with respect to any exercise by the Developer of its rights pursuant to this Part 2, Section 7.2.1.d or the exercise by the Enterprises of their rights pursuant to Section 7.2.1.d of the Project Agreement.

7.2.2. Sublicensing

The O&M Contractor shall have the right to issue sub-licenses under the Project License to Subcontractors as necessary to carry out the O&M Contractor's obligations under this Agreement.

7.2.3. Limitations and qualifications on the grant of rights and Project License

- a. The Project License is personal property, and not an interest in real property, and shall not be recorded in the City of Denver's Clerk and Recorder's Office or in any other county.
- b. The O&M Contractor shall not use any part of the Site, or exercise its rights with respect to the Project License, in either case, for any purpose other than carrying out its obligations under this Agreement.

- c. The O&M Contractor's interest in the Right-of-Way, and any Additional Right-of-Way, is limited by the Project License and the other terms and conditions of this Agreement. The O&M Contractor is not and shall not be, and shall not be treated as or be deemed to be, the legal or equitable owner of the Right-of-Way, or any Additional Right-of-Way, in whole or in part, for any purpose.
- d. This Agreement does not, and shall in no way be deemed to, constitute a lease (regardless of the characterization of such lease, including as an operating lease or a financing lease) to the O&M Contractor or a grant (regardless of the characterization of such grant, including by way of easement, purchase option, conveyance, lien or mortgage), in each case, of any right, title, interest or estate, including any fee simple, leasehold estate, easement or property interest of any kind, in or to the Right-of-Way, any Additional Right-of-Way, the Project or of any Assets incorporated into, or appurtenant to, the Project.
- e. Without limiting its rights under this Agreement arising as a result of the occurrence of any Compensation Event as described in paragraph b. of the definition thereof in Part A of Annex A (Definitions and Abbreviations), the O&M Contractor acknowledges and agrees that its Possession of each ROW Parcel and any Additional ROW Parcel pursuant to Part 2, Section 7.2.1.b is subject to the rights and restrictions of access and use of certain third parties that fall within the definition of Possession in Part A of Annex A (Definitions and Abbreviations) from time to time during the O&M Term. The O&M Contractor shall reasonably facilitate access to and through the Site by all Persons with such rights of access and use, and shall not take any action (or refrain from taking any action) in a manner that is calculated or intended to directly or indirectly prejudice or frustrate such rights of access and use.

7.3. Ownership and Liability

7.3.1. Right-of-Way

All of the Right-of-Way, and any Additional Right-of-Way, shall be held or acquired, as applicable, in the name of CDOT (or in such other name(s) as the Enterprises may otherwise determine in their discretion). The O&M Contractor acknowledges that subject to the terms of the Project Agreement, the Enterprises reserve to themselves and their designees, including CDOT, the rights of use, occupancy and, as applicable, ownership over, under, upon and in the Right-of-Way and any Additional Right-of-Way.

7.3.2. O&M Contractor's responsibilities

On and from the Substantial Completion Date and following either the O&M Contractor's Possession of any ROW Parcel or any Additional ROW Parcel pursuant to Part 2, Section 7.2.1.b (and for such period of time as the O&M Contractor is entitled to have Possession thereto pursuant to such Section), or the O&M Contractor's acquisition of any interest or right with respect to any Temporary Property or Permit Area (and for such period of time as such interest or right is maintained), the O&M Contractor shall (as among the Parties):

- a. have sole responsibility for such part of the Site (and for all Elements located thereon), including risk of damage and loss; and
- b. bear any costs and expenses incurred in relation to such part of the Site (and in relation to all Elements located thereon), including all fees, expenses and taxes associated with such part of the Site,

in each case subject to the express terms of this Agreement.

7.3.3. Transfer of Ownership

- a. With respect to any part of any Element that is to be affixed to any ROW Parcel or any Additional ROW Parcel (or any infrastructure already affixed thereto) as part of the Project, ownership of and title to each such part shall automatically vest in CDOT (or, in

- the Enterprises' discretion, their designee) free from all Encumbrances immediately upon such part being affixed thereto.
- b. Any Work Product, including all property interests therein, shall be considered "works made for hire" pursuant to Law and, accordingly, shall be the property of the Enterprises, excluding only any Proprietary Intellectual Property.
 - c. Notwithstanding Part 2, Section 7.3.3.a:
 - i. the vesting of ownership of and title to any part of any Element pursuant to Part 2, Section 7.3.3.a and any Work Product pursuant to Part 2, Section 7.3.2.b shall not imply acceptance of such part of such Work Product by the Developer (or by such part's or such Work Product's current or future owner) as to the compliance of such part with the requirements set out in this Agreement, nor shall the O&M Contractor be relieved of its obligation to comply with any of its obligations under this Agreement with respect to such Element or such Work Product, as applicable, the O&M Activities or otherwise; and
 - ii. subject to the terms of this Agreement, the risk of loss or damage to such part of any Element and any Work Product held by the O&M Contractor shall remain with the O&M Contractor pursuant to Part 2, Section 7.3.2.
 - d. The O&M Contractor shall not do any act or thing that will create any Encumbrance against any Element (or part thereof), any Work Product or any part of the Right-of-Way or of any Additional Right-of-Way, and shall promptly remove any such Encumbrance, unless such Encumbrance came into existence as a result of a Developer Act.

PART C: OBLIGATIONS TO OPERATE AND MAINTAIN THE PROJECT

8. THE O&M CONTRACTOR'S PROJECT OBLIGATIONS

8.1. General Undertakings

8.1.1. The O&M Contractor:

- a. shall assume and perform as part of its obligations under this Agreement all of the obligations, liabilities and risks relating to the O&M Activities imposed upon the Developer under the Project Agreement, except as explicitly provided otherwise in this Agreement;
- b. acknowledges that it has reviewed a copy of the Project Agreement and it is aware of the Developer's obligations to the Enterprises under the Project Agreement;
- c. unless expressly provided otherwise under this Agreement, must carry out its obligations under this Agreement at all times so as to:
 - i. ensure that the Developer can satisfy its corresponding obligations under the Project Agreement in connection with the O&M Activities;
 - ii. as it relates to the O&M Activities, enable the Enterprises and each Developer-Related Entity to perform their respective obligations under the Project Agreement or Principal Subcontract (as applicable), and so as not to cause or contribute to any breach or default of, so as to mitigate the consequences of any such breach or default, and generally so as to have regard for such obligations;
 - iii. unless expressly permitted under this Agreement, must not do, or omit to do, anything which causes the Developer to be in breach (without regard to cure periods available to the Developer) of its obligations under the Project Agreement so far as they relate to the O&M Activities;
- d. acknowledges and accepts the Enterprises' rights under the Project Agreement including, but not limited to, the Enterprises' rights of oversight, inspection, testing and auditing in regards to the O&M Activities; and
- e. to the extent that any revisions are made to the Project Agreement between execution of this Agreement and the effectiveness of the Project Agreement, shall negotiate in good faith with the Developer to amend this Agreement to incorporate comparable revisions.

8.1.2. The O&M Contractor hereby undertakes to perform the O&M Activities pursuant to and in compliance with:

- a. the terms, conditions and requirements of this Agreement, including each of the Schedules;
- b. the Project Standards;
- c. Law;
- d. all Governmental Approvals and all Permits in effect from time to time; and
- e. Good Industry Practice.

8.1.3. Furthermore, the O&M Contractor hereby undertakes that it shall:

- a. not adopt or, once adopted, change its legal form or name of organization without the Developer's prior consent, such consent:
 - i. in the Developer's discretion, if such change would adversely affect the Developer's rights, obligations or interests under the Project Agreement, this Agreement or with respect to the Project; and
 - ii. otherwise, not to be unreasonably withheld;

- b. Intentionally Omitted;
 - c. not permit any other Person to carry out any business activities on the Site or in relation to the Project, except as expressly permitted by this Agreement;
 - d. not commit or otherwise facilitate, and not permit any other O&M Contractor-Related Entity to commit or otherwise facilitate, the commission of any Prohibited Acts;
 - e. maintain and, as applicable, comply with, and ensure that each Subcontractor maintains and complies with, all licenses, certifications and accreditations and related standards, as well as all other required professional abilities, skills and capacity, in each case required to perform the O&M Work After Construction; and
 - f. subject to any rights of the O&M Contractor arising as a result of the occurrence of any O&M Contractor Change documented in a Change Order or any Supervening Event, bear all risk, including of delay and/or increased cost, resulting from or arising out of the use of the Reference Design or the I-70 Cover Plans or any differences between its design for any portion of the Project and the Reference Design or such plans.
- 8.1.4. Without limiting its other obligations under this Agreement, the O&M Contractor shall use Reasonable Efforts to cooperate and coordinate with the Developer, the Enterprises, CDOT and all other Governmental Authorities with jurisdiction in matters relating to the O&M Activities, including their review, inspection and oversight of the Project as contemplated herein, in accordance with any Law granting such jurisdiction or as contemplated by any of the Third Party Agreements.
- 8.1.5. During the O&M Term, unless required to do so by the Project Agreement, the Developer shall not make or agree to make any material amendments to or material variations of the Project Agreement related to the O&M Work (it being acknowledged for the purposes of this Part 2, Section 8.1.5 that any amendment which is prejudicial to the interests of the O&M Contractor or which is likely to have a material and adverse effect on the O&M Contractor shall be regarded as material) without the prior written consent of the O&M Contractor, such consent not to be unreasonably withheld or delayed.
- 8.1.6. The O&M Contractor acknowledges and accepts the rights of the Enterprises under the Project Agreement to the extent related to the O&M Work. The O&M Contractor shall, on behalf of the Developer, accommodate the Enterprises' rights with respect to the O&M Work under the Project Agreement, including, but not limited to, the right of access to the Right-of-Way and the Additional Right-of-Way and the right to inspect the O&M Work After Construction, subject to and in accordance with the requirements of the Project Agreement. Notwithstanding anything to the contrary in this Agreement, this Agreement shall not impose any obligations, duties or liabilities upon the Enterprises beyond those obligations, duties, or liabilities expressly assumed by the Enterprises under the Project Agreement. Further, nothing in this Agreement shall create any direct cause of action by the O&M Contractor against the Enterprises.
- 8.1.7. Where either Party has supplied information relating to the O&M Work to the other Party under this Agreement for a particular purpose, such other Party shall use that information only for the purpose for which it was or is intended (unless otherwise required by Law). Where the O&M Contractor supplies the Developer with information to be passed on to the Enterprises under the Project Agreement or any third party, the Developer shall:
- a. include that information in any relevant documents; and
 - b. not change that information without the consent of the O&M Contractor, such consent not to be unreasonably withheld or delayed;

provided, however, that the Developer shall be entitled to adapt the format or presentation of such information and to add or delete from such information (provided, in each case, such information does not then become misleading by reason of, inter alia, the fact that it appears in a new or different context) in order to enable it to comply with its obligations to provide such information whether under the Project Agreement or otherwise.

- 8.1.8. The Developer and the O&M Contractor shall each notify the other of any actual breach or default or prospective breach or default (in circumstances where the Developer or the O&M Contractor acting reasonably considers that any actual breach or default is likely to occur) of the Enterprises under the Project Agreement or any Subcontractors under the relevant Subcontract of which, in each case, it is aware where that default might reasonably be expected to have a material adverse effect on the performance of any aspect of the O&M Work.
- 8.1.9. The O&M Contractor shall not be entitled to, and hereby waives all and any rights to claim any increase in or payment additional to the O&M Fee (whether pursuant to any term of this Agreement, by way of damages or breach of contract, in tort, for breach of any other common law or statutory duty or otherwise, or on the basis of, *quantum meruit* or otherwise howsoever), except:
- a. in respect of acts or omissions or negligence or default of the Developer or the Enterprises for which relief is expressly permitted under the terms of this Agreement, subject to Equivalent Project Relief and the Pay-if-Paid Provisions, as applicable; and/or
 - b. in respect of any Change implemented pursuant to the terms of this Agreement; or as otherwise expressly granted pursuant to the terms of this Agreement.

8.2. Assumption of Risk and Responsibility

- 8.2.1. Except to the extent otherwise expressly provided for in this Agreement (including as the result of the occurrence of any O&M Contractor Change documented in a Change Order or Supervening Event), all risks, costs and expenses in relation to the performance by the O&M Contractor of the O&M Activities are allocated to, and accepted by, the O&M Contractor as its entire and exclusive responsibility.
- 8.2.2. As among the Parties, the O&M Contractor shall be solely responsible for the selection, pricing and performance of all Subcontractors (of every tier) and all other Persons for whom or for which the O&M Contractor is responsible by contract or pursuant to Law, and for the performance, acts, defaults, omissions, breaches and negligence of the same, as fully as if any such performance, acts, defaults, omissions, breaches or negligence were those of the O&M Contractor.
- 8.2.3. Intentionally Omitted.

8.3. Federal and State Requirements

- 8.3.1. Compliance with Federal requirements
- a. The O&M Contractor shall, and shall ensure that in respect of the Project and the O&M Activities each of its Subcontractors and each of their respective Subcontractors shall, comply with all Federal Law requirements applicable to transportation projects that receive Federal credit or funds, including the requirements set out in Schedule 15 (Federal and State Requirements).
 - b. In the event of any conflict between any applicable Federal Law requirement and the other requirements of this Agreement, Part 2, Section 2.4.2.a.xi shall apply.
- 8.3.2. False or fraudulent statements and claims
- a. The O&M Contractor recognizes that the requirements of the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. § 3801 *et seq.*, and the US DOT regulations, “Program Fraud Civil Remedies,” 49 CFR Part 31, apply to its actions under this Agreement.
 - b. Accordingly, by signing this Agreement, the O&M Contractor certifies and affirms the truthfulness and accuracy of any claim, statement, submission or certification it has made pertaining to this Agreement and the Project.
 - c. The O&M Contractor acknowledges that, if it makes a false, fictitious or fraudulent claim, statement, submission or certification, then, in addition to any other penalties that may be applicable, the Federal government reserves the right to impose the penalties of the

Program Fraud Civil Remedies Act of 1986, 31 U.S.C. § 3801 *et seq.*, on the O&M Contractor to the extent the Federal government deems appropriate.

8.3.3. Federal status of Project

- a. The O&M Contractor acknowledges that:
 - i. the FHWA has designated the Project as a “Major Project” under 23 U.S.C. § 106, which designation, as applied to the Project by the FHWA (including pursuant to the FHWA’s “Major Project Financial Plan Guidance” (December 2014)), requires:
 - A. submission by the Enterprises to, and approval by, FHWA of a project management plan; and
 - B. subject to Part 2, Section 8.4.3.a, submission by the Developer of:
 - I. promptly following Financial Close, an initial financial plan; and
 - II. during the Construction Period, annual updates to such financial plan,in each case to, and for approval by, FHWA; and
 - C. submission by the Enterprises to, and approval by, FHWA of a supplement to each financial plan submitted by the Developer pursuant to Part 2, Section 8.3.3.a.i.B; and
 - ii. portions of the Project are and will be part of the National Highway System, as defined in 23 CFR § 470.
- b. Accordingly:
 - i. Intentionally Omitted; and
 - ii. the O&M Contractor acknowledges and agrees that the Enterprises may submit documents based on or including the Proposal and/or Project Records to the FHWA in order for the Enterprises to comply with the requirements of 23 U.S.C. § 106(h) as applied to the Project by FHWA, including as part of any submission made by the Enterprises to the FHWA as described in Part 2, Sections 8.3.3.a.i.A and 8.3.3.a.i.C, and the O&M Contractor shall also use Reasonable Efforts to cooperate with and assist the Developer and the Enterprises in the Enterprises complying with such requirements as reasonably requested by the Developer from time to time.

8.3.4. Emergency Repair Work

- a. As a condition to receiving payment of any Change in Costs for performing Emergency Repair Work as a result of the occurrence of any Compensation Event as described in paragraphs c., (with respect to relevant Public Safety Orders), d., e. and k. of the definition thereof in Part A of Annex A (Definitions and Abbreviations), the O&M Contractor shall competitively bid and contract for such Emergency Repair Work as FHWA’s or FEMA’s or any other equivalent Governmental Authority’s applicable regulations, policies or procedures may require in order for the Enterprises or CDOT to obtain reimbursement for eligible costs.
- b. the O&M Contractor shall:
 - i. ensure that any Emergency Repair Work is performed pursuant to the requirements of this Agreement, Law and FHWA’s, FEMA’s and any other equivalent Governmental Authority’s applicable regulations, policies or procedures, including (as applicable) the FHWA’s “Emergency Relief Manual”; and

- ii. maintain estimates, cost records and supporting documentation pursuant to such applicable regulations, policies or procedures, and otherwise in form and substance as reasonably required by the Enterprises.
- c. Without limiting the O&M Contractor's obligations under Part 2, Sections 8.3.4.a and 8.3.4.b, the Developer and, pursuant to the Project Agreement, the Enterprises may, in their discretion, provide oversight of Emergency Repair Work as may be required by FHWA, FEMA or any other equivalent Governmental Authority, or by Law, to preserve eligibility for reimbursement of eligible costs.

8.3.5. Restrictions on communications with FHWA and US DOT

The O&M Contractor shall only communicate with the FHWA and the US DOT in relation to the Project and the O&M Activities indirectly through the Developer, except for direct communications:

- a. as required by Law;
- b. expressly permitted or required by this Agreement; or
- c. made with the Developer's prior Approval,

in each of which cases the O&M Contractor shall provide the Developer with regular and reasonably detailed written updates regarding such communications.

8.4. Governmental Approvals and Permits

8.4.1. Department Provided Approvals

The O&M Contractor acknowledges that the Department Provided Approvals were obtained prior to the Agreement Date by CDOT and, subject to Part 2, Section 8.4.3.b, shall be maintained by the Enterprises, acting in coordination with CDOT, at their cost and expense (excluding any cost or expense borne by the O&M Contractor pursuant to Part 2, Section 8.4.3.b). The Developer shall use Reasonable Efforts to ensure that the O&M Contractor is able to obtain the benefit of any Department Provided Approval required in connection with the O&M Activities.

8.4.2. O&M Contractor's responsibility to obtain Governmental Approvals and Permits

- a. Subject to Part 2, Section 8.4.4.a, and without limiting its rights under this Agreement arising as a result of the occurrence of any O&M Contractor Change documented in a Change Order or any Supervening Event (including any such rights that relate to obtaining any new or amending any existing Governmental Approval or Permit as a result of any such Change Order or Supervening Event), the O&M Contractor shall be responsible for obtaining all Governmental Approvals (other than the Department Provided Approvals) and all Permits required for the O&M Activities, and for arranging any necessary amendments to any Governmental Approvals (including, pursuant to Part 2, Section 8.4.3.b, Department Provided Approvals) and any Permits, in each case as necessary to perform its obligations hereunder at the time and in the manner when they fall due for performance.
- b. Without limiting its obligations under Part 2, Section 19.1, the O&M Contractor shall deliver to the Developer copies of all Governmental Approvals and Permits for which it is responsible pursuant to Part 2, Section 8.4.2.a (and copies of any modifications, renewals, extensions and waivers to or of any thereof) promptly following receipt by the O&M Contractor of the same.
- c. The O&M Contractor's obligations under Part 2, Section 8.4.2.a shall not be limited by any Law placing responsibility for the same upon the Developer, either or both of the Enterprises, CDOT or another Person. To the extent that any Governmental Approval or Permit is required to be in the name of the Developer or the Enterprises, as applicable, the procedures specified in Part 2, Section 8.4.4 shall apply.

8.4.3. Submissions to the FHWA and involving Department Provided Approvals; process for obtaining and modifying Governmental Approvals

- a. Prior to submitting an application for any Governmental Approval or Permit (or for any proposed termination, modification, renewal, extension or waiver of a Governmental Approval or Permit) or (with respect to FHWA only) any other Deliverable to:

- i. the FHWA; or
- ii. any Person with respect to all such submissions that involve a Department Provided Approval,

the O&M Contractor shall first submit the same, together with any supporting environmental or other studies, analyses and data, to the Developer for Approval. The O&M Contractor shall submit each other application for a Governmental Approval or Permit (or for any proposed termination, modification, renewal, extension or waiver of a Governmental Approval or Permit) for, except as otherwise provided in this Agreement, Information to the Developer.

- b. As between the Developer and the O&M Contractor, the O&M Contractor shall perform all necessary actions and shall bear all risk of delay and/or all risk of cost and expense, in either case, associated with Governmental Approvals and with Permits relating to the O&M Activities, including:

- i. without limiting the Developer's, the Enterprises', CDOT's and FHWA's rights to independently evaluate all environmental and other studies and documents and fulfil the other responsibilities assigned to them by 23 CFR Part 771, conducting all necessary environmental or other studies and preparing all necessary environmental or other documents in compliance with Law (provided that, pursuant to Section 8.4.3.b.i of the Project Agreement, the Enterprises may, in their discretion, elect to conduct any such studies or to prepare any such documents at the Enterprises' cost and expense);

- ii. obtaining and complying with all necessary new Governmental Approvals and Permits, or all necessary modifications, renewals and extensions of existing Governmental Approvals and Permits, or of pending applications for Governmental Approvals and Permits; and

- iii. all risk and cost of litigation,

where such risk of delay and/or risk of cost and expense:

- iv. either:

- A. relates to:

- I. a Governmental Approval that is not a Department Provided Approval; or

- II. a Permit; or

- B. results from:

- I. Intentionally Omitted;

- II. Intentionally Omitted;

- III. differences between the operations and/or maintenance means and methods the O&M Contractor chooses for any portion of the Project and those set out, referred to or contemplated in any Governmental Approval (including, for certainty, any Department Provided Approval) or Permit, or in the application for any Governmental Approval or Permit;

- IV. the incorporation of any ATC (as defined in the ITP) into this Agreement;
 - V. the acquisition of any Additional ROW Parcel, O&M Contractor-risk Permit Area or Temporary Property Rights; and/or
 - VI. any breach of Law, Governmental Approval, Permit or this Agreement, or fraud, willful misconduct, criminal conduct, recklessness, bad faith or negligence by or of any O&M Contractor-Related Entity; and
- v. does not otherwise result from the occurrence of any Supervening Event (including where such Supervening Event results in a requirement to obtain any new or amend any existing Governmental Approval or Permit) or to the extent otherwise agreed in any Change Order.
- c. If the O&M Contractor is unable to obtain, modify, renew or extend any Governmental Approval or Permit for which it is responsible pursuant to Part 2, Section 8.4.2.a, then, without limiting its rights under this Agreement arising as a result of the occurrence of any O&M Contractor Change documented in a Change Order or any Supervening Event (including as a result of the Developer's breach of their obligations under Part 2, Section 8.4.4.a, and including any such rights that relate to obtaining any new or amending any existing Governmental Approval or Permit as a result of any such Change Order or Supervening Event), the O&M Contractor shall promptly notify the Developer and proceed or continue to perform the O&M Activities according to the requirements of this Agreement and the means and methods for the O&M Activities set out, referred to or contemplated in the Department Provided Approvals, and any other Governmental Approvals and any Permits that have been or are subsequently obtained.
- d. No such inability of the O&M Contractor to obtain, modify, renew or extend any Governmental Approval or Permit for which it is responsible pursuant to Part 2, Section 8.4.2.a shall itself constitute a Supervening Event or other legal or contractual basis for any claim or relief hereunder by or for the O&M Contractor to the extent that the cause of, or reason for, such inability does not otherwise constitute a Supervening Event or such other basis for any claim or relief. To the extent that any basis for any claim or relief hereunder by or for the O&M Contractor arising from an inability of the O&M Contractor to obtain, modify, renew or extend any Governmental Approval or Permit for which it is responsible pursuant to Part 2, Section 8.4.2.a is caused by or otherwise arises from a Supervening Event, the provisions of Part 1, Article 6 shall apply.
- 8.4.4. Developer and Enterprises assistance in obtaining and modifying Governmental Approvals and Permits
- a. At the reasonable request of the O&M Contractor, the Developer shall reasonably assist and cooperate with the O&M Contractor where necessary to obtain, modify, renew or extend any Governmental Approval or Permit for which the O&M Contractor is otherwise responsible pursuant to Part 2, Section 8.4.2.a. To the extent that the O&M Contractor considers the assistance of the Enterprises necessary, the O&M Contractor shall provide such information as is necessary for Developer to request the assistance and cooperation of the Enterprises under the Project Agreement. Such assistance and cooperation of the Developer and the Enterprises (as the case may be), shall include using Reasonable Efforts to:
- i. execute (or as applicable, facilitate execution by CDOT of) such documents as can only be executed by the Developer, the Enterprises, or CDOT, as applicable;
 - ii. make such applications or recordings (or, as applicable, facilitate such applications or recordings by CDOT), either in its or their own name or jointly with the O&M Contractor, as can only be made by the Developer, the Enterprises, or

CDOT, as applicable, or in joint names of the O&M Contractor and the Developer, the O&M Contractor and the Enterprises, or the O&M Contractor and CDOT, as the case may be; and

- iii. attend meetings and cooperate with any relevant Governmental Authority, Utility Owner or Railroad as reasonably requested by the O&M Contractor (or, as applicable, facilitate such attendance and cooperation by CDOT), in each case within a reasonable period of time after being requested to do so by the O&M Contractor.
- b. Subject to any pre-agreed scope of O&M Activities and budget and to any rights of the Developer that arise as a result of the occurrence of any O&M Contractor Change documented in a Change Order or Supervening Event, the O&M Contractor shall (i) fully reimburse the Developer (for its reimbursement of the Enterprises under the Project Agreement) for all reasonable costs and expenses the Enterprises, and, as applicable, CDOT, incur as a result of the Enterprises, and, as applicable, CDOT complying with their obligations pursuant Section 8.4.4.a of the Project Agreement; and (ii) reimburse the Developer for all reasonable costs and expenses the Developer incurs as a result of the Developer complying with its obligations pursuant to Part 2, Section 8.4.4.a of this Agreement, provided that, except to the extent provided pursuant to Part 2, Section 8.4.3.b, the O&M Contractor shall not be responsible for the payment of the Enterprises' and, as applicable, CDOT's, costs and expenses incurred in obtaining, modifying, renewing or extending any Department Provided Approval.

8.5. Third Party Agreements

8.5.1. Compliance with Third Party Agreements and performance of related Work

The O&M Contractor shall not, and shall ensure that each of its Subcontractors and each of their respective Subcontractors shall not, take any action (or refrain from taking any action) in a manner that is calculated or intended to directly or indirectly prejudice or frustrate the performance by any party to a Third Party Agreement of its obligations thereunder.

8.5.2. Designation of third party agreements

The Developer may, upon a corresponding action of the Enterprises pursuant to Section 8.5.2 of the Project Agreement, by notice to the O&M Contractor require the O&M Contractor to comply with the terms (to the extent specified in such notice) of:

- a. an agreement (a copy of which shall be attached to such notice) that is not prior to such notice a Third Party Agreement and to which either or both of the Enterprises and/or CDOT is a party with:
 - i. any Governmental Authority, Utility Owner or Railroad; or
 - ii. any property owner or other Person:
 - A. having jurisdiction over any aspect of the Project or Work; or
 - B. having any property interest affected by the Project or the Work; and
- b. any amendment or modification of an existing Third Party Agreement (a copy of which amendment or modification shall be attached to such notice),

and, following delivery of any such notice, such agreement, amendment or modification shall become a Third Party Agreement or amend or modify the existing Third Party Agreement, as the case may be, for purposes of this Agreement.

8.5.3. Restrictions on new third party agreements

Unless expressly Approved by the Developer, the O&M Contractor shall not enter into, and shall ensure that no other O&M Contractor-Related Entity enters into, any agreement with any Person referred to in Part 2, Section 8.5.2.a.i or Part 2, Section 8.5.2.a.ii, that in any way purports to, or

reasonably could be interpreted to, obligate the Developer, the Enterprises, CDOT or the State. For certainty, this Part 2, Section 8.5.3 shall not apply to any Sprint Reimbursement Agreement, to which Section 4.6.1.b of Schedule 10 (*Design and Construction Requirements*) to the Project Agreement shall apply.

8.5.4. Sharing of Recovery

Subject to Part 2, Section 15.7.3, the Developer shall, subject to Equivalent Project Relief and the Pay-if-Paid Provisions, compensate the O&M Contractor for any Losses incurred under any URA, any Utility Work Order, any RRA or the Cover Maintenance Agreement to the extent the Developer recovers or receives any amounts in respect of the same pursuant to Section 8.5.4 of the Project Agreement.

8.5.5. Enforcement of RRAs

The O&M Contractor acknowledges and agrees that, pursuant to Section 8.5.5 of the Project Agreement, upon the reasonable request of the Developer, the Enterprises shall use Reasonable Efforts to enforce their rights under each RRA against the Railroad that is party to such agreement. To the extent that the Developer is entitled to make a reasonable request pursuant to Section 8.5.5 of the Project Agreement, the O&M Contractor may submit an Equivalent Claim Notice pursuant to Part 1, Article 6.2 requesting that Developer make such a request under the Project Agreement.

8.6. Compliance with Project Standards

8.6.1. Monitoring of Project Standards

- a. The O&M Contractor shall, and shall ensure that each of its Subcontractors and each of their respective Subcontractors shall, monitor and familiarize themselves with changes or additions to, or replacements of, the Project Standards (in the case of Subcontractors, to the extent applicable to their portion of the O&M Activities).
- b. The O&M Contractor shall notify the Developer of any change or addition to, or replacement of, any Project Standard promptly after it becomes aware of such change, addition or replacement.

8.6.2. Changes, additions or replacements to or of Project Standards

- a. Subject to Part 2, Section 8.6.2.b, the O&M Contractor shall not be required to comply with any change or addition to, or replacement of, a Project Standard, except pursuant to an Enterprise Change documented in a Change Order or a Directive Letter.
- b. If and to the extent that compliance by the O&M Contractor with any change or addition to, or replacement of, a Project Standard is required for the O&M Contractor's continued compliance with Law (the burden of establishing which shall be on the O&M Contractor), but without limiting the O&M Contractor's obligation to at all times comply with Law, the Developer shall submit an Equivalent Claim Notice.
- c. Notwithstanding any Enterprise Change documented in a Change Order or a Directive Letter in relation to any change or addition to, or replacement of, an O&M Standard, the O&M Contractor shall only be entitled to compensation for Change in Costs resulting from any such Enterprise Change if and to the extent such Enterprise Change:
 - i. is initiated to conform the Construction Standards with a Discriminatory Change in Law or a Qualifying Change in Law;
 - ii. requires the O&M Contractor to incur any expenditure; or
 - iii. is materially more onerous as applied to the Project or the O&M Contractor than the application thereof to (A) Similar Projects of either Enterprise or CDOT or (B) the principal contractors responsible for such projects,

provided that, in each case, such Enterprise Change does not arise as a result of or is not made in response to any breach of Law, Governmental Approval, Permit or this Agreement, or fraud, willful misconduct, criminal conduct, recklessness, bad faith or negligence by or of any O&M Contractor-Related Entity.

9. O&M CONTRACTOR’S CONSTRUCTION PERIOD OBLIGATIONS

9.1. Intentionally Omitted

9.2. Intentionally Omitted

9.3. Payment and Performance Security

9.3.1. Obligation to obtain and maintain Contractor Bonds

- a. The O&M Contractor shall deliver to the Developer (for delivery to the Enterprises) Contractor Bonds with respect to:
 - i. Intentionally Omitted; and
 - ii. the O&M Activities,as and when required pursuant to Section 1(g) of Part 5 of Schedule 3 (Commencement and Completion Mechanics).
- b. Thereafter, the O&M Contractor shall ensure that each such Contractor Bond shall remain in full force and effect, and in full compliance with the definition of Contractor Bond set out in Part A of Annex A (Definitions and Abbreviations), and the Developer shall provide the O&M Contractor with such information as to the budgeted amount for O&M Work to be self-performed by the Developer to enable the O&M Contractor to comply with its obligation to deliver and maintain the Contractor Bonds, provided that, subject to Part 2, Sections 9.3.1.c and 9.3.1.d, the terms of the Enterprises’ O&M Direct Agreement, the Developer’s rights to draw on any Contractor Bond in accordance with its terms and the Developer’s rights to draw on any Contractor Bond in accordance with its terms and the terms of the Project Agreement, promptly following the earlier of the O&M Termination Date and:
 - i. Intentionally Omitted; and
 - ii. the O&M Termination Date, the Enterprises shall release or return to the Developer each Contractor Bond delivered pursuant to Part 2, Section 9.3.1.a and upon return of such Contractor Bond to the Developer, the Developer shall promptly return such Contractor Bond to the O&M Contractor.
- c. Notwithstanding Part 2, Section 9.3.1.a, the O&M Contractor acknowledges and agrees that, to the extent required by Law in connection with O&M Activities to be performed during the Term, or as otherwise required in connection with a Change Order or Directive Letter, the O&M Contractor shall obtain and maintain additional payment and/or performance security in such amounts, for such periods of time and in such form (if any) as required by Law or in connection with a Change. For purposes of this Agreement, references to a Contractor Bond shall be deemed to include any such additional security and any such additional security shall, subject to compliance with Law or the terms of any Change Order or Directive Letter, be provided by and maintained with an Eligible Surety or otherwise pursuant to Part 2, Section 9.3.3. The Enterprises shall release or return to the Developer any such additional security obtained and maintained pursuant to this Part 2, Section 9.3.1.c at the end of the relevant period during which the O&M Contractor is obligated to obtain and maintain the same, and upon return of such additional security to the Developer, the Developer shall promptly return such additional security to the O&M Contractor.
- d. The O&M Contractor shall be entitled to replace any Contractor Bond delivered pursuant to Part 2, Section 9.3.1.a or otherwise obtained and maintained pursuant to Part 2,

Section 9.3.1.c. Promptly following such replacement, and subject to the O&M Contractor's continued compliance with Part 2, Section 9.3.1.a or Part 2, Section 9.3.1.c, as applicable, the Enterprises shall release or return to the Developer such replaced Contractor Bond, and upon release or return of such replaced Contractor Bonds to Developer, the Developer will promptly release or return such Contractor Bonds to the O&M Contractor.

9.3.2. Methods of providing Contractor Bonds

Subject to Part 2, Section 9.3.3, the O&M Contractor may, in its discretion (but subject always to compliance with any Law referred to in Part 2, Section 9.3.1.c), satisfy its obligations to provide Contractor Bonds under Part 2, Sections 9.3.1.a and 9.3.1.c by:

- a. Intentionally Omitted.
- b. procuring such Contractor Bonds so that such bonds as provided by an Eligible Surety are security for:
 - i. the O&M Contractor's performance obligations to the Developer under this Agreement; and
 - ii. the O&M Contractor's payment obligations to lower tier Subcontractors and to laborers.

The Developer shall be the primary obligee under such Contractor Bonds and the Enterprises and the Collateral Agent shall be additional obligees.

9.3.3. Alternative Forms of Security

The O&M Contractor may satisfy its obligations under Part 2, Section 9.3.1.a, in a manner that provides security at least equivalent (including with respect to the amount thereof) to the security required to be provided pursuant to Part 2, Section 9.3.2.b, by delivering to the Developer for its Acceptance, and for delivery to the Enterprises for their Acceptance:

- a. alternative form(s) of payment and/or performance surety bond(s) that are not in substantially the form set out in Schedule 20 (*Forms of Contractor Bonds*);
- b. one or more irrevocable on demand letters of credit from Eligible Financial Institutions; and
- c. one or more parent company guarantees;

provided that in each case the O&M Contractor shall deliver any such proposed alternative form(s) of security to the Developer for their Acceptance at least 45 Calendar Days prior to the date on which the O&M Contractor is required, or otherwise proposes, to have such security in full force and effect for purposes of compliance with its obligations under this Agreement.

9.3.4. No Release

Any demand made by an obligee under any Contractor Bond shall not serve to waive, or release the O&M Contractor from, any of the O&M Contractor's obligations under this Agreement.

9.4. Warranties and Liability for Defects

9.4.1. Intentionally Omitted.

9.4.2. Warranty Beneficiaries

- a. The Warranties (including, for certainty, the Additional Warranties) are for the express benefit of the Developer in order for the Developer to satisfy its obligations to each of the Enterprises, CDOT and, with respect to those Warrantied Elements to be maintained by each of them, the City of Denver and Denver Public Schools (all such beneficiaries, together, the "Warranty Beneficiaries") under Section 9.4 of the Project Agreement. The O&M Contractor acknowledges and agrees that the Developer and, pursuant to Section

9.4.2 of the Project Agreement, the Enterprises shall have the right, on behalf of any Warranty Beneficiary, to enforce the Warranties (as defined in the Project Agreement) relating to such Warranty Beneficiary's Warranted Elements. The O&M Contractor acknowledges and agrees that pursuant to Section 9.4.2.a of the Project Agreement, the Enterprises is required to coordinate with the Warranty Beneficiary with a view to the Enterprises being the primary party with which the Developer is required to interface in connection with any such enforcement. The Developer shall use Reasonable Efforts to coordinate the exercise of such right of enforcement with the Enterprises, with a view to the Developer being the primary party with which the O&M Contractor is required to interface in connection with any such enforcement.

- b. The rights and remedies of the Developer or any Warranty Beneficiary arising with respect to any breach of the Warranties shall not limit the O&M Contractor's liability or responsibility, or the Developer's rights and remedies, under this Agreement or Law with respect to the O&M Activities, including with respect to any O&M Defect, Nonconforming Work, O&M Noncompliance Event, Non-Permitted Closure, breach, fraud, willful misconduct, criminal conduct, recklessness, bad faith or negligence.

9.4.3. Intentionally Omitted

9.4.4. O&M Contractor obligation to remedy Warranted Elements

- a. Intentionally Omitted
- b. The O&M Contractor acknowledges and agrees that the Developer, the Enterprises, CDOT and each Warranty Beneficiary may perform work on any Warranted Element during the Warranty Period, to the extent they or it otherwise have or has rights to do so, without voiding any Warranty, provided that the O&M Contractor:
 - i. shall not be liable for any O&M Defect or any other breach of the Warranties caused, or to the extent exacerbated by, such work; and
 - ii. does not hereby waive any defenses, rights, claims or remedies to which it may otherwise be entitled as a result of the performance of such work.

9.4.5. Intentionally Omitted

9.4.6. Standard Warranties

The O&M Contractor shall in accordance with Good Industry Practice use Reasonable Efforts to procure for itself customary supplier, manufacturer and other third party warranties, which warranties shall, to the extent commercially available, be fully transferrable and assignable to the Developer and the Enterprises (and, to the extent that any such warranty is in respect of a Warranted Element, the relevant Warranty Beneficiary) upon the O&M Termination Date.

9.4.7. Assignment of Warranties

Upon the commencement of the Operating Period, all warranties and guaranties provided by the Construction Contractor to the Developer (other than the Warranties) shall be assigned by the Developer to the O&M Contractor. No such warranty shall relieve the O&M Contractor of any obligation under this Agreement, and no failure of any Warranted Elements or guaranteed structures, improvements, fixtures, machinery, equipment or material or a failure or refusal of the Construction Contractor or supplier to honor its warranty obligations shall be the cause for any increase in any O&M Fee or excuse any non-performance of the O&M Activities unless such failure is itself attributable to a Supervening Event. The O&M Contractor shall enforce such warranties and guaranties during the O&M Term, provided that either a Warranty Beneficiary, or the Developer on behalf of a Warranty Beneficiary may elect to enforce such guaranties on its own behalf if such Person has provided notice of such intent to enforce the warranty.

9.5. Assignment of Certain Causes of Action

The O&M Contractor agrees to assign to the Developer (for subsequent assignment to the Enterprises pursuant to the Project Agreement) all rights, title, and interest in and to all causes of action the O&M Contractor may have under Section 4 of the Clayton Act (15 U.S.C. § 15) or under comparable State Law, arising from purchases of goods, services or materials pursuant to this Agreement. This assignment shall be made and become effective automatically upon payment of the Substantial Completion Payment, without further acknowledgment by the Parties.

10. O&M CONTRACTOR’S OPERATING PERIOD OBLIGATIONS

The O&M Contractor shall perform the O&M Activities from and after the Substantial Completion Date pursuant to and in compliance with the terms, conditions and requirements of this Agreement.

11. INTENTIONALLY OMITTED

12. COOPERATION AND COORDINATION WITH RELATED TRANSPORTATION FACILITIES, ON LIMITED O&M WORK SEGMENTS AND WITH OTHER DEPARTMENT PROJECTS

12.1. Duty to Cooperate and Coordinate

Without limiting its other obligations under this Agreement, the O&M Contractor shall:

- a. cooperate and coordinate with the Developer, the Enterprises, CDOT and any relevant third party (including the City of Denver in relation to the Denver Planned Projects) as reasonably requested by the Developer, with regard to the design, construction, operation and/or maintenance of, respectively, the Project (including with regard to the Limited O&M Work Segments) and the Related Transportation Facilities; and
- b. otherwise use Reasonable Efforts in order to minimize any adverse impact:
 - i. on the O&M Activities as a result of the design, construction, operation and/or maintenance of any Related Transportation Facility and the Limited O&M Work Segments; and
 - ii. on (A) any Related Transportation Facility, (B) the Limited O&M Work Segments and (C) any Other Department Project, as a result of the O&M Activities.

12.2. Compatibility and Integration with Related Transportation Facilities

The O&M Contractor shall:

- a. Intentionally omitted;
- b. as part of the O&M Activities, and without prejudice to the O&M Contractor's right arising as a result of the occurrence of any Compensation Event as described in paragraph n. of the definition thereof in Part A of Annex A (Definitions and Abbreviations), provide for, facilitate and accommodate such compatibility, integration and transition with, to and from Related Transportation Facilities in accordance with Good Industry Practice; and
- c. not take any action (or refrain from taking any action) in a manner that is calculated or intended to directly or indirectly prejudice or frustrate the construction, operation and maintenance of any Related Transportation Facility.

12.3. Procurement of Other Department Projects

- 12.3.1. In response to the Developer’s written request (which shall only be issued upon receipt by the Developer of a corresponding request from the Enterprises), the O&M Contractor shall inform the Developer within 12 Working Days of receipt of such request of all material facts or circumstances of which it is aware that might reasonably be expected to affect the procurement, design, construction, operation or maintenance of any Other Department Project, or any other Related Transportation Facility, in the light of the details concerning such project or facility that

the Developer has provided to the O&M Contractor or that are otherwise known by the O&M Contractor.

12.3.2. If the Developer notifies the O&M Contractor that the Enterprises are preparing to issue or have issued any Other Department Project Procurement Materials or are otherwise seeking offers from any Person or negotiating with any Person in respect of any proposed Other Department Project, then the O&M Contractor shall use Reasonable Efforts as the Developer or the Enterprises may reasonably request to assist such procurement, including providing access to the Developer, the Enterprises, CDOT and each of their respective designees to:

- a. each part of the Site for the purpose of surveying, inspecting or investigating the relevant parts thereof (provided that the Developer shall, and shall require that other parties requiring access at the Developer's request shall, and shall require that the Enterprises and all other parties requiring access to, at all times comply with all relevant site rules and safety regulations in relation to the Site); and
- b. Project Records, but only to the extent that the Developer may otherwise require the O&M Contractor to deliver or to procure the delivery of such records under the terms of this Agreement,

in each case solely and to the extent necessary to procure and award the relevant Other Department Project.

12.3.3. Upon notice from the Developer that the Enterprises or CDOT will undertake any Other Department Project, then the O&M Contractor shall:

- a. use Reasonable Efforts to cooperate and coordinate with the Developer, the Enterprises, CDOT and each of their respective designees engaged in such Other Department Project as required pursuant to Part 2, Section 12.1;
- b. not take any action (or refrain from taking any action) in a manner that is calculated or intended to directly or indirectly prejudice or frustrate such Other Department Project; and
- c. at reasonable times and upon reasonable notice, allow access to the Developer, the Enterprises, CDOT and each of their respective designees to each part of the Site as is reasonably necessary to facilitate the carrying out of and interface with the Other Department Project (provided that the Developer shall, and shall require that the Enterprises and all other parties requiring access to, at all times comply with all relevant site rules and safety regulations in relation to the Site),

provided that the O&M Contractor shall not be required to take (or refrain from taking) any action (including allowing access pursuant to Part 2, Section 12.3.3.c) that would reasonably be anticipated to adversely affect the O&M Activities or the carrying out of the O&M Contractor's other obligations under this Agreement.

12.4. Enterprises' Assistance

12.4.1. The Enterprises have agreed under Section 12.4 of the Project Agreement to, at reasonable times and upon reasonable notice, and subject to CORA, provide to Developer (and the Developer will, to the extent permitted by the Enterprises, provide to the O&M Contractor) reasonable access to plans, surveys, drawings, specifications, reports and other documents and information in the possession of, or otherwise accessible by, the Enterprises pertaining to Related Transportation Facilities and Other Department Projects, including the use of Reasonable Efforts to provide the Developer with copies of the same (which copies the Developer will provide to the O&M Contractor).

12.4.2. At the O&M Contractor's request, the Developer shall use Reasonable Efforts to provide assistance to the O&M Contractor in fulfilling its obligations under Part 2, Sections 12.1 through 12.3, including requesting assistance from the Enterprises under Section 12.4.1.b of the Project Agreement. In no event shall the Developer or the Enterprises be required to bring any legal action or proceeding against any third party.

12.5. Traffic Management

12.5.1. The O&M Contractor acknowledges that the Enterprises, CDOT, the City of Denver, Emergency Services and other Governmental Authorities with traffic management authority under Law, shall have, without obligation or liability to the O&M Contractor, the right to conduct traffic management activities pursuant to standard practices and procedures in effect from time to time:

- a. on the Right-of-Way, any Additional Right-of-Way and any other part of the Site that is open for use by the traveling public;
- b. in connection with the conduct of operations and maintenance activities by CDOT in relation to the Limited O&M Work Segments;
- c. in connection with any Other Department Project; and
- d. on any Related Transportation Facility,

which activities shall not, for certainty, themselves constitute a Supervening Event.

12.5.2. To the extent that the Developer has received notice from the Enterprises under Section 12.5.2 of the Project Agreement, the Developer shall use Reasonable Efforts to notify the O&M Contractor in advance of any Person conducting any traffic management activities as permitted by Part 2, Section 12.5.1, provided that no such notice shall be required as to activities of which the O&M Contractor is known by the Developer to be aware (whether due to prior notice, the terms of this Agreement or otherwise). Subject to Equivalent Project Relief, to the extent that any such traffic management activities prevent the O&M Contractor from accessing locations for the purpose of curing any Category 1 Defect or Category 2 Defect, the Defect Remedy Period applicable to the relevant Category 1 Defect or Category 2 Defect shall be extended by the period of time that such access is prevented.

13. INTENTIONALLY OMITTED

PART D: CHANGES AND SUPERVENING EVENTS

14. CHANGE PROCEDURE

14.1. Right to Initiate Changes

14.1.1. Enterprises and Developer Changes

- a. The O&M Contractor acknowledges that subject to the limitations set out in Schedule 24 (Change Procedure) of the Project Agreement, the Enterprises may (and, pursuant to Section 8.6.2.b of the Project Agreement, shall) propose a Change in accordance with Section 14.1 of the Project Agreement. Such a notice submitted pursuant to Section 14.1 of the Project Agreement by the Enterprises (an “Enterprise Change Notice”) shall be processed pursuant to Sections 1 and 3 of Schedule 24 (Change Procedure).
- b. In the event that the Enterprises require a Change in accordance with the Project Agreement and such Change modifies the O&M Contractor’s obligations hereunder and which Changes are of a compulsory nature for the Developer under the Project Agreement, then the O&M Contractor shall be obligated to perform the O&M Activities as modified, and the provisions of Part 1, Article 6 shall apply.
- c. The Developer may, at any time prior to the O&M Termination Date, propose a Change to the O&M Activities pursuant to a notice to the O&M Contractor (a “Developer Change Notice”). Any Developer Change Notice shall be processed pursuant to Sections 1 and 3 of Schedule 24 (Change Procedure).

14.1.2. O&M Contractor Changes

The O&M Contractor may request that Developer consider Changes by submitting a notice to the Developer. Such a notice submitted by the O&M Contractor (an “O&M Contractor Change Notice”) shall be processed pursuant to Sections 2 and 3 of Schedule 24 (Change Procedure) to this Agreement.

14.2. Directive Letters

14.2.1. The O&M Contractor acknowledges and accepts that:

- a. pursuant to Section 1.4 of Schedule 24 (Change Procedure) of the Project Agreement, the Enterprises may deliver a Directive Letter (as defined in the Project Agreement) to Developer at any time after the Enterprises’ submission of a related Enterprise Change Notice to Developer; and
- b. pursuant to Section 1.5 of Schedule 24 (Change Procedure), the Developer may deliver a Developer Directive Letter to the O&M Contractor at any time after the Developer’s submission of a related Developer Change Notice to the O&M Contractor.

15. SUPERVENING EVENTS

15.1. Submission of Supervening Event Notices and Submissions

15.1.1. The O&M Contractor shall (and shall ensure that each of its Subcontractors shall) develop and maintain procedures pursuant to Good Industry Practice to anticipate, identify and notify the Developer (or, in the case of the Subcontracts, the O&M Contractor) of the occurrence of Supervening Events, provided that:

- a. such obligation, and the O&M Contractor’s obligations under Part 2, Sections 15.1.2 through 15.1.5, shall not apply to any Enterprise Change or Developer Change initiated pursuant to a Change Order; and
- b. Part 2, Section 15.1.2.a shall not apply to any Enterprise Change initiated pursuant to an Enterprise Directive Letter or a Developer Change initiated pursuant to a Developer Directive Letter.

15.1.2. If the O&M Contractor becomes aware or determines that a Supervening Event has occurred (regardless of whether such event has concluded or is continuing, and without limiting any other obligation the O&M Contractor may have to notify the Developer or any other Person of, or in relation to, such event pursuant to this Agreement, Law, any Permit or Governmental Approval or otherwise) or, with respect to Part 2, Section 15.1.2.a only, is likely to occur, then, subject to Part 2, Section 15.1.4, it shall:

- a. promptly, and in any event no later than seven Working Days, after becoming aware of such occurrence or making a determination that such event is likely to occur submit to the Developer an Equivalent Claim Notice in the form provided in Part A of Schedule 21 (Forms of Supervening Event Notices and Submissions) (a “Supervening Event Notice”), and the Developer shall submit a corresponding Supervening Event Notice under the Project Agreement and, subject to Part 1, Article 6.4.3, thereafter assert its rights under the Project Agreement with respect to the Supervening Event claimed by the O&M Contractor;
- b. thereafter, and to the extent a Supervening Event has occurred:
 - i. promptly, and in any event no later than 12 Working Days, after becoming aware of such occurrence submit to the Developer a submission in the form provided in Part B of Schedule 21 (Forms of Supervening Event Notices and Submissions) (a “Preliminary Supervening Event Submission”); and
 - ii. promptly after becoming aware of such occurrence, and in any event no later than the later of (A) 55 Working Days after becoming aware thereof and (B) 25 Working Days after the conclusion of such Supervening Event, submit to the Developer a submission in the form provided in Part B of Schedule 21 (Forms of Supervening Event Notices and Submissions) (a “Detailed Supervening Event Submission”),

provided that, for purposes of determining when the O&M Contractor is required to submit any notice or submission under this Part 2, Section 15.1.2, the O&M Contractor shall be deemed to be aware of any Supervening Event on the date of its occurrence to the extent the O&M Contractor failed to comply with its obligations under Part 2, Section 15.1.1.

15.1.3. The O&M Contractor acknowledges and agrees that pursuant to the Project Agreement, the Enterprises shall respond promptly to any Supervening Event Submission submitted by the Developer pursuant to Section 15.1.2.b of the Project Agreement and, as applicable, to any notice or submission in relation thereto subsequently submitted by the Developer pursuant to Part 2, Section 15.1.5 of the Project Agreement, in each case for the purpose of attempting, together with the Developer, to reach an agreement pursuant to Section 15.3.2 of the Project Agreement. The Developer shall provide to the O&M Contractor copies of the Enterprises’ responses to Supervening Event Submissions promptly upon receipt.

15.1.4. The O&M Contractor may satisfy its obligation under Part 2, Section 15.1.2.b.i by instead submitting a Detailed Supervening Event Submission promptly and in any event no later than the expiry of the applicable period that would have otherwise applied under Part 2, Section 15.1.2.b.i.

15.1.5. After the O&M Contractor submits any notice or submission to the Developer pursuant to Part 2, Section 15.1.2 or 15.1.4, the O&M Contractor shall, with respect to any Supervening Event that has occurred, promptly:

- a. notify the Developer (or the Enterprises on behalf of the Developer pursuant to Part 1, Article 6.4.3.2) if at any time it becomes aware of any further material information relating to the Supervening Event, to the extent that such information is new or renders information previously submitted materially inaccurate or misleading; and
- b. following the Developer’s or the Enterprises’ reasonable request, or as required pursuant to the terms of any written agreement previously made pursuant to Part 2, Section 15.3.2 (including with respect to a continuing Supervening Event), submit to the Developer (for

submission to the Enterprises, where applicable) additional information related to the relevant Supervening Event.

15.2. Limitations on Supervening Event Submissions

15.2.1. Failure to provide timely notice

If, following the occurrence of a Supervening Event, the O&M Contractor fails to comply with its obligations under any of Part 2, Sections 15.1.2 and 15.1.5 within the applicable time period (in each case measured from the date on which the O&M Contractor first became aware (or, in accordance with the proviso to Part 2, Section 15.1.2, is deemed to have become aware) or determined that a Supervening Event had occurred) specified in such Sections, then the O&M Contractor shall be deemed to have irrevocably and forever waived and released:

- a. the portion of any claim or right with respect to such event (including the right to take into account for calculation purposes, pursuant to (i) Part 2, Section 15.7 or (ii) the definition of Appendix B Parcel Costs in Part A of Annex A (Definitions and Abbreviations), the amount of certain Losses whether or not the Developer would owe the O&M Contractor compensation in respect of any such Loss as a result of such calculation) that would relate to adverse effects accruing, persisting or increasing after the expiry of the applicable period or otherwise due to such failure and until the O&M Contractor complies with the relevant obligation; and
- b. any and all claim or right with respect to such event (including the right to take into account for calculation purposes, pursuant to (i) Part 2, Section 15.7 or (ii) the definition of Appendix B Parcel Costs in Part A of Annex A (Definitions and Abbreviations), the amount of certain Losses whether or not the Developer would owe the O&M Contractor compensation in respect of any such Loss as a result of such calculation) if the O&M Contractor has failed to:
 - i. submit a Supervening Event Notice on or before the 24th Working Day after the O&M Contractor became aware (or, in accordance with the proviso to Part 2, Section 15.1.2, is deemed to have become aware) of the occurrence of a Supervening Event;
 - ii. submit a Preliminary Supervening Event Submission on or before the 64th Working Day after the O&M Contractor became aware (or, in accordance with the proviso to Part 2, Section 15.1.2, is deemed to have become aware) of the occurrence of a Supervening Event; or
 - iii. submit a Detailed Supervening Event Submission on or before the later of (A) the 112th Working Day after becoming aware (or, in accordance with the proviso to Part 2, Section 15.1.2, is deemed to have become aware) of the occurrence of a Supervening Event and (B) the 100th Working Day after the conclusion of such Supervening Event.

15.2.2. Duty to mitigate

- a. Without modifying its other obligations under this Agreement, the O&M Contractor shall use Reasonable Efforts to mitigate the effects of any Supervening Event, including by re-sequencing, reallocating or redeploying its forces to other parts of the O&M Work After Construction.
- b. The O&M Contractor shall not be entitled to any extension of time, compensation or other relief pursuant to this Part 2, Section 15 to the extent such extension of time, compensation or other relief would have been avoided by its compliance with Part 2, Section 15.2.2.a.
- c. To the extent that any failure by the O&M Contractor under this Part 2, Section 15 impacts the rights of the Construction Contractor under the Construction Contract to pursue Equivalent Project Relief (as such rights are defined in the Construction Contract),

the O&M Contractor shall be liable to the Construction Contractor as provided under the Interface Agreement.

15.2.3. Intentionally Omitted

15.3. Resolution

15.3.1. If the O&M Contractor has complied with its obligations under Part 2, Section 15.1 then, subject to Equivalent Project Relief:

- a. in the case of any Relief Event or Compensation Event, the O&M Contractor shall be relieved from the performance of its obligations under this Agreement to the extent, and only to the extent, that the O&M Contractor's inability to perform such obligations is due directly to, and limited to the duration of the direct effects of, such Relief Event or Compensation Event, provided that the O&M Contractor shall not be excused from timely compliance with any obligation to make a payment pursuant to this Agreement due to the occurrence of any Relief Event or Compensation Event;
- b. in the case of any Relief Event or Compensation Event:
 - i. to the extent that any O&M Noncompliance Event is directly attributable to the occurrence of such Relief Event or Compensation Event, subject to Part 2, Section 15.3.1.a, no O&M Noncompliance Points shall accrue in respect of such O&M Noncompliance Event; and
 - ii. to the extent that any Closure is directly attributable to the occurrence of such Relief Event or Compensation Event, subject to Part 2, Section 15.3.1.a, such Closure shall be an Excused Closure, but only to the extent that paragraphs g. and h. of the definition thereof in Part A of Annex A (*Definitions and Abbreviations*) are satisfied;
- c. Intentionally omitted
- d. in the case of any Relevant Event, the Developer shall compensate the O&M Contractor pursuant to Part 2, Sections 15.4 (without double-counting), as applicable, for Compensable Costs, subject to Part 2, Section 15.7; and
- e. in the case of any Relief Event or Compensation Event that occurs or is continuing during the Operating Period, the Developer shall be entitled to deduct from the O&M Fee otherwise payable pursuant to Schedule 6 (*Performance Mechanism*) (and after taking into account any adjustment otherwise to be made to such payments pursuant to Part 2, Sections 15.4, as applicable, as a result of any compensation payable pursuant to Part 2, Section 15.3.1.b.ii):
 - i. the O&M Contractor's actual avoided costs of O&M Activities not being performed as a direct result of the occurrence or, as the case may be, continuation of such Relief Event or Compensation Event during the Operating Period; and
 - ii. the amount that the O&M Contractor is (or, pursuant to Part 2, Section 35.5.a, should be) entitled to recover under any "business interruption" coverage under the Available Insurance as a direct result of the occurrence or, as the case may be, continuation of such Relief Event or Compensation Event during the Operating Period.

15.3.2. The O&M Contractor acknowledges and accepts that, pursuant to the Project Agreement, upon agreement between the Developer and the Enterprises, such agreement not to be unreasonably withheld, as to:

- a. the extension of time, relief and/or compensation (including the payment terms of, and documentation required for, any such compensation) to which Developer is then entitled pursuant to the Project Agreement (including, as necessary, on a retroactive basis) in

respect of any Relief Event or Compensation Event as determined pursuant to Section 15.3.1 of the Project Agreement; and/or

- b. the amount of any Loss that Developer is then entitled to take into account for calculation purposes pursuant to (i) Section 15.7 of the Project Agreement or (ii) the definition of Appendix B Parcel Costs in Part A of Annex A (Definitions and Abbreviations) to the Project Agreement, whether or not the Enterprises owe Developer compensation in respect of any such Loss as a result of such calculation,

the Developer and the Enterprises shall execute a written memorandum (or, with respect to any Supervening Event that was continuing when a prior such memorandum was executed, a written addendum to such prior memorandum) in a form to be prepared by the Enterprises setting out the details of such agreement. Developer shall deliver a copy of any such agreement or amendment to the O&M Contractor and, subject to the Pay-if-Paid Provisions and Equivalent Project Relief, grant the O&M Contractor such relief with respect to the Supervening Event which is the subject of such agreement or amendment as is authorized by such agreement or amendment.

15.3.3. The O&M Contractor acknowledges and agrees that if the Developer and the Enterprises do not reach agreement as contemplated in Part 2, Section 15.3.2 and any dispute in relation to the relevant matters is resolved pursuant to the Project Agreement Dispute Resolution Procedure, to the extent that the Project Agreement Dispute Resolution Procedure does not result in a written record of such resolution equivalent to such a memorandum, the Parties shall execute such a memorandum to document such resolution. The Developer shall provide a copy of any such memorandum to the O&M Contractor.

15.3.4. The O&M Contractor acknowledges and accepts that a Change Order implementing an Enterprise Change shall constitute an agreed memorandum for purposes of Part 2, Section 15.3.2. The Developer shall provide a copy of any such Change Order to the O&M Contractor.

15.4. Payment of Change in Costs

a. The O&M Contractor acknowledges and accepts that pursuant to Section 15.4.a of the Project Agreement, the Enterprises may elect to pay Change in Costs either as a lump sum payment for work already performed or as a series of progress payments for payment of work as it is performed. Subject to Equivalent Project Relief and the Pay-if-Paid Provisions, the Developer shall pay Change in Costs to the O&M Contractor hereunder to the extent set forth in a written demand for such payment within 5 Working Days of the Developer's receipt of payment for such Change in Costs from the Enterprises.

b. The O&M Contractor shall maintain (and shall ensure that each of its Subcontractors and each of their respective Subcontractors shall maintain) cost records, supporting documentation and such other Project Records as necessary to calculate and document any Change in Costs payable pursuant to Part 2, Section 15.4.a.

c. Any O&M Contractor written demand for payment pursuant to Part 2, Section 15.4.a shall be made in form, and accompanied by such documentation, as necessary to comply with the terms of any written memorandum executed pursuant to Section 15.3.2 of the Project Agreement, as applicable, and otherwise as reasonably required by the Enterprises.

15.5. Intentionally Omitted

15.6. Intentionally Omitted

15.7. Compensation Exclusions and Limitations

15.7.1. With respect to any Compensable Costs incurred by the O&M Contractor in respect of any Relevant Event (other than any No-deductible Event, to which this Part 2, Section 15.7.1 shall not apply) that occurs during the Construction Period, if the aggregate amount of such Compensable Costs directly resulting from the occurrence of such event is greater than \$20,000 (any such event, a "Compensable Construction Period Event"), then, subject to Equivalent Project Relief,

the Pay-if-Paid Provisions and Part 2, Section 15.7.3, the Developer shall compensate the O&M Contractor (as applicable):

- a. with respect to the occurrence of all Compensable Construction Period Events (other than such events that are subject to Part 2, Sections 15.7.1.b, 15.7.1.c or 15.7.1.d), for the amount by which the aggregate amount of Compensable Costs directly resulting from the occurrence of all such events is greater than \$500,000;
 - b. with respect to all Unexpected Utility Condition Events that are Compensable Construction Period Events, for the aggregate amount of Compensable Costs directly resulting from the occurrence of all such events as follows:
 - i. 50% of the first \$5,000,000 of such aggregate amount of Compensable Costs (while, for certainty, the O&M Contractor shall bear the remaining 50% of such costs); and
 - ii. 100% of any and all such aggregate amount of Compensable Costs in excess of such first \$5,000,000 of such aggregate amount; and
 - c. with respect to all Non-Appendix B Parcel Unexpected Hazardous Substances Events that are Compensable Construction Period Events, for the aggregate amount of Compensable Costs directly resulting from the occurrence of all such events as follows:
 - i. 50% of the first \$6,000,000 of such aggregate amount of Compensable Costs (while, for certainty, the O&M Contractor shall bear the remaining 50% of such costs); and
 - ii. 100% of any and all such aggregate amount of Compensable Costs in excess of such first \$6,000,000 of such aggregate amount; and
 - d. with respect to all Appendix B Parcel Unexpected Hazardous Substances Events that are (or, as the case may be, to the extent they are) Compensable Construction Period Events, for the aggregate amount of Compensable Costs directly resulting from the occurrence of all such events as follows:
 - i. none of the first \$25,000,000 of all Appendix B Parcel Costs; and
 - ii. 100% of any and all such aggregate amount of Compensable Costs that are:
 - A. incurred as a direct result of the occurrence of all Appendix B Parcel Unexpected Hazardous Substances Events that are (or, as the case may be, to the extent that they are) Compensable Construction Period Events; and
 - B. in excess of the dollar amount specified in Part 2, Section 15.7.1.d, where, for purposes of this Part 2, Section 15.7.1.d.ii, Change in Costs as a component of such aggregate amount of Compensable Costs shall be determined in accordance with paragraph a. of the definition thereof in Part A of Annex A (*Definitions and Abbreviations*) (and not paragraph b. of such definition)).
- 15.7.2. With respect to any otherwise Compensable Costs incurred by the O&M Contractor in respect of any Relevant Event (other than any No-deductible Event, to which this Part 2, Section 15.7.2 shall not apply) that occurs during the Operating Period, if the aggregate amount of such Compensable Costs directly resulting from the occurrence of such event is greater than \$10,000 (indexed), then, subject to Equivalent Project Relief and Part 2, Section 15.7.3, the Developer shall compensate the O&M Contractor, with respect to the occurrence of all such events, for the amount by which the aggregate amount of such Compensable Costs directly resulting from the occurrence of all such events in any given Contract Year is greater than \$100,000 (indexed).
- 15.7.3. With respect to any Change in Costs incurred by the O&M Contractor as a result of the occurrence of a Compensation Event as described in paragraph f.vi. of the definition thereof in Part A of Annex A (*Definitions and Abbreviations*):

- a. pursuant to Section 15.7.3 of the Project Agreement, the Developer shall cause the Enterprises to use Reasonable Efforts to assert a Claim against the relevant Utility Owner in respect of the Losses incurred by O&M Contractor as a result of the occurrence of any such Compensation Event which Losses constitute Change in Costs to which this Part 2, Section 15.7.3 applies;
- b. the O&M Contractor's rights under Part 2, Sections 15.3.1.d, 15.4, 15.7.1 and 15.7.2 to be compensated with respect to any and all Change in Costs to which this Part 2, Section 15.7.3 applies shall (subject to Part 2, Section 15.7.3.c) be subject to Equivalent Project Relief and limited to the amount of such Change in Costs (if any) that the Developer receives from the Enterprises;
- c. the Developer shall be entitled to be reimbursed by the O&M Contractor (to the extent that the Enterprises is entitled to be reimbursed by the Developer pursuant to Section 15.7.3.c of the Project Agreement) for the reasonable cost and expense of pursuing any Claim against a Utility Owner pursuant to Part 2, Section 15.7.3.a (whether or not the Enterprises make any recovery from the relevant Utility Owner as a result of making such Claim), including by deducting the amount thereof from any amount otherwise payable to the O&M Contractor under this Agreement including as contemplated by Part 2, Section 15.7.3.b; and
- d. provided that the Developer has complied with its obligations under Part 2, Section 15.7.3.a, the O&M Contractor:
 - i. agrees to be bound by the outcome of the Enterprises' use of Reasonable Efforts to assert a Claim pursuant to Section 15.7.3.a of the Project Agreement in connection with the occurrence of any such Compensation Event; and
 - ii. hereby waives any right that it may have to recover from the Developer any Change in Costs to which this Part 2, Section 15.7.3 applies to the extent that any such Change in Costs that it has incurred as a result of the occurrence of any such Compensation Event exceed the amount received by the Developer from the Enterprises pursuant to Part 2, Sections 15.7.3.b and 15.7.3.c.
- e. Intentionally Omitted;
- f. Intentionally Omitted.

15.8. Special Provisions for Force Majeure Events

15.8.1. Following the occurrence of a Force Majeure Event:

- a. the O&M Contractor, if an Affected Party with respect to such Force Majeure Event, shall promptly notify the Developer of the Force Majeure Event pursuant to Part 2, Sections 15.1 and 15.2.2.a, and the Developer shall promptly notify the Enterprises of the same pursuant to Section 15.8.1.a of the Project Agreement;
- b. the Developer, if an Affected Party with respect to such Force Majeure Event, shall promptly notify the O&M Contractor of the Force Majeure Event; and
- c. the O&M Contractor acknowledges that the Enterprises, if an Affected Party (as defined in the Project Agreement) with respect to such Force Majeure Event, shall promptly notify Developer of the Force Majeure Event, including the date of its commencement, evidence of its effect on the obligations of the Affected Party and any action proposed to mitigate its effect, and the Developer shall promptly notify the O&M Contractor upon receiving such notice from the Enterprises, and the Developer shall be an Affected Party under this Agreement to the extent that the Enterprises is an Affected Party under the Project Agreement.

15.8.2. Whether or not any notice has been given pursuant to Part 2, Section 15.8.1:

- a. the O&M Contractor, if an Affected Party, shall comply with Part 2, Sections 15.1 and 15.2.2.a with respect to the treatment of the relevant Force Majeure Event as a Relief Event pursuant to Part 2, Section 15.3; and
- b. If the Enterprises or the Developer is an Affected Party, the Developer may require the O&M Contractor to consult with the Developer and the Enterprises in good faith, and to use all Reasonable Efforts, to agree on appropriate terms to mitigate the effects of the relevant Force Majeure Event and facilitate the continued performance of this Agreement.

15.8.3. To the extent the Developer is an Affected Party, the Developer shall be relieved from the performance of their affected obligations under this Agreement (and shall not incur liability to the O&M Contractor for Losses in connection with a Force Majeure Event to the extent that the Enterprises is relieved of its obligations under the Project Agreement), provided that, notwithstanding the foregoing, the Developer shall not be excused from timely payment of any monetary obligations under this Agreement due to the occurrence of any Force Majeure Event.

PART E: KEY PERSONNEL, SUBCONTRACTORS AND WORKFORCE

16. PERSONNEL

16.1. O&M Contractor's Key Personnel Obligations

Subject to Part 2, Section 16.2, the O&M Contractor shall ensure that all Key Personnel are at all relevant times (as determined by reference to the periods set out in Schedule 27 (*Key Personnel*)):

- a. seconded to or employed by such Person; and
- b. occupying the role and performing the function of their position,

in each case as required by or set out in such Schedule and any other relevant provisions of this Agreement.

16.2. Removal or Replacement of Key Personnel

16.2.1. The O&M Contractor shall not remove and/or replace any of the Key Personnel without the Developer's prior Approval and to the extent required by Section 16.2.1 of the Project Agreement, the Approval of the Enterprises, provided that the O&M Contractor may, as required by Law or pursuant to Good Industry Practice, terminate, suspend or limit the duties of any Key Personnel individual (and, promptly thereafter, notify the Developer of such action).

16.2.2. If for any reason the O&M Contractor wishes to remove and/or replace any Key Personnel and such removal and/or replacement requires the Developer's Approval under Part 2, Section 16.2.1 and the Approval of the Enterprises under Section 16.2.1 of the Project Agreement, the O&M Contractor shall promptly deliver a notice to the Developer for Approval (and for delivery to the Enterprises for the Enterprises' Approval), setting out the reason for such removal and/or replacement, together with:

- a. the identity, expertise and experience of the proposed replacement; and
- b. any such support information or evidence as the Developer may reasonably require in relation to such matters.

16.3. O&M Contractor's Personnel Qualifications

The O&M Contractor shall ensure that all O&M Activities shall be performed and, as applicable, supervised by personnel:

- a. who are careful, skilled, experienced and competent in their respective trades or professions;
- b. who are professionally qualified to, and who hold all necessary registrations, permits, approvals and licenses to, perform or supervise the relevant part of the O&M Activities pursuant to this Agreement; and
- c. who shall assume professional responsibility for the accuracy and completeness of the relevant part of the O&M Activities performed or supervised by them.

17. SUBCONTRACTING REQUIREMENTS

17.1. Subcontracting Terms and Requirements

17.1.1. Each Subcontract, and any amendments or supplements thereto, shall comply with, and, as applicable, incorporate the terms set out in, Part A of Schedule 16 (*Mandatory Terms*) to this Agreement.

17.1.2. Intentionally Omitted.

17.1.3. The O&M Contractor and the Developer acknowledge and agree that any action taken by either of them in breach of Section 17.1.3 of the Project Agreement shall be null and void.

17.1.4. The O&M Contractor shall deliver to the Developer (for delivery to the Enterprises) a copy of:

- a. Intentionally Omitted; and
- b. each Subcontract (and any amendment to any such Subcontract) promptly and in any event no later than 20 Calendar Days after execution of such Subcontract (or amendment).

17.2. Intentionally Omitted

17.3. Subcontracting with Affiliates

- a. Without limiting its obligations under Part 2, Section 17.1, the O&M Contractor shall have the right to have the O&M Activities directly or indirectly performed by Affiliates of itself only if the following conditions are satisfied:
 - i. the Affiliate shall be qualified, experienced and capable in the performance of such part of the O&M Activities assigned;
 - ii. the O&M Contractor shall execute a written Subcontract with the Affiliate;
 - iii. such Subcontract shall be subject to the Developer's Acceptance, and:
 - A. be on terms consistent with this Agreement and Good Industry Practice;
 - B. be on terms no less favorable to the O&M Contractor (or, as applicable, its Subcontractor) than those that the O&M Contractor (or such Subcontractor) could reasonably obtain in an arms' length, competitive transaction with an unaffiliated Subcontractor;
 - C. be in form and substance similar to Subcontracts then being used by the O&M Contractor or its Subcontractors, as applicable, for similar work or services with unaffiliated Subcontractors; and
 - D. set out the scope of work and services thereunder and all the pricing, terms and conditions in relation to such scope of work and services.
- b. The O&M Contractor shall make no payments to Affiliates for work or services in advance of provision of such work or services under the terms of a Subcontract that complies with Part 2, Section 17.3.a, except for reasonable mobilization payments or other payments consistent with arm's length, competitive transactions of similar scope.

17.4. Relationship with Subcontractors

- a. Pursuant to Part 2, Section 8.2, the retention of any Subcontractor (of any tier) by the O&M Contractor in accordance with this Agreement shall not:
 - i. relieve the O&M Contractor of its obligations and liabilities, or deprive the O&M Contractor of any rights, in each case under this Agreement; and
 - ii. relieve the Developer of or increase its obligations and liabilities, or deprive the Developer of any rights, in each case under this Agreement.
- b. The Developer acknowledges and agrees that:
 - i. the Subcontracts may provide that the Subcontractors may claim relief from the O&M Contractor only if and to the extent that such claim or relief is granted to the O&M Contractor under this Agreement; and
 - ii. the O&M Contractor will not be precluded from advancing any claim or seeking any relief under this Agreement solely by reason that the O&M Contractor is not liable to a Subcontractor under a Subcontract until and/or only to the extent that

such claim or relief is granted by the Developer to the O&M Contractor under this Agreement,

provided that all such claims shall be made and administered by the O&M Contractor, and nothing in this Section creates any contract or obligation directly between or among the Developer and any Subcontractor or gives any Subcontractor any rights against the Developer.

17.5. Prompt Payment of Subcontractors

17.5.1. The O&M Contractor shall, and shall ensure that each of its Subcontractors and each of their respective Subcontractors shall, pay each of its and their respective Subcontractors an amount equal to:

- a. 100% of the calculated value of the completed work or the services provided under the relevant Subcontract through and including the last day of the most recently concluded month; *less*
- b. any amounts previously paid in respect of such completed work or provided services; *less*
- c. any amount that is subject to retainage as permitted by Part 2, Section 17.5.4; *less*
- d. any amount that is subject to a good faith dispute presented in accordance with the terms of the relevant Subcontract,

promptly, which for purposes of this Part 2, Section 17.5.1 means no later than:

- e. with respect to:
 - i. Intentionally Omitted;
 - ii. the O&M Contractor as payor, 30 Calendar Days following the relevant payee Subcontractor's delivery of an invoice to the O&M Contractor in compliance with Section 2.(c) of Part A of Schedule 16 (Mandatory Terms) in respect of such amount as determined pursuant to Part 2, Sections 17.5.1.a through 17.5.1.d and in accordance with the terms of the relevant Subcontract; and
- f. with respect to any Subcontractor as payor, seven Calendar Days following such payor Subcontractor's receipt of a corresponding payment in respect of the relevant work or services, as applicable.

17.5.2. The O&M Contractor may request Approval of the Developer (which in turn shall request Approval of the Enterprises in accordance with Section 17.5.2 of the Project Agreement) for any payee Subcontractor to be exempt from being paid promptly as provided for in Part 2, Section 17.5.1. Following the Approval of such an exemption, Part 2, Section 17.5.1.e (and not Part 2, Section 17.5.1.f) shall apply to the exempted Subcontractor as a payor Subcontractor as if such exempted Subcontractor was the O&M Contractor (except to the extent that any of such exempted Subcontractor's payee Subcontractors are also subject to such an Approved exemption under this Part 2, Section 17.5.2).

17.5.3. Notwithstanding the provisions of Part 2, Section 17.5.1 and Part 2, Section 17.5.2, the O&M Contractor shall pay each of its direct Subcontractors in accordance with 49 CFR § 26.29 no later than 30 Calendar Days following payment from the Developer to the O&M Contractor of any O&M Fee or other payment under this Agreement to the extent that part of such payment is required under the terms of the relevant Subcontract to be used to pay such Subcontractor the relevant amount.

17.5.4. The O&M Contractor shall, and shall ensure that each of its direct Subcontractors and each of their respective Subcontractors shall, be permitted (but not, for certainty, required) to withhold retainage from payments otherwise due to a payee Subcontractor, provided that:

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- a. such retainage shall not exceed 5% of the calculated value of the completed work or services provided from time to time; and
- b. all such retainage shall be paid in full no later than 30 Calendar Days after the work or services performed under the relevant Subcontract is or are satisfactorily completed.

PART F: PROJECT MANAGEMENT

18. DELEGATION OF AUTHORITY

18.1. Intentionally Omitted

18.2. Use of Representatives

18.2.1. Appointment of Representatives

- a. Pursuant to this Part 2, Section 18.2.1, the O&M Contractor and the Developer shall each identify and maintain a person as its and their official representative (respectively, the “O&M Contractor’s Representative” and the “Developer’s Representative” and, together, the “Representatives” and each a “Representative”) with the functions and powers as set out in Part 2, Section 18.2.2.
- b. The O&M Contractor’s Representative shall at all times be its “Project Manager”, initially as identified in Schedule 27 (Key Personnel), subject to replacement pursuant to Part 2, Section 16.2. The Developer’s Representative shall initially be its “Project Director” as notified to the O&M Contractor on or prior to the Agreement Date, subject to replacement pursuant to this Part 2, Section 18.2.1.
- c. From time to time:
 - i. the Developer may replace its Representative; and
 - ii. the O&M Contractor and the Developer may each delegate all or part its or their Representative’s responsibilities under this Agreement,
in either case by notice to the other Party containing:
 - iii. the name, title, mailing address, principal phone numbers, email address (or digital equivalent) and fax number (if any) of the replacement Representative or delegatee;
 - iv. in the case of partial delegations of authority, a schedule setting out the extent to which authority for managing any aspect of this Agreement has been delegated and to whom; and
 - v. in the case of time-limited replacements or delegations, the start and end date for such time-limited replacement or delegation.

18.2.2. Power and authority of Developer and O&M Contractor Representatives

- a. Except as previously notified by the O&M Contractor to the Developer before any relevant act or instruction occurs or is given:
 - i. the Developer shall be entitled to assume that the O&M Contractor’s Representative has, and the O&M Contractor shall (subject to reasonable exceptions and limitations to be notified to the Developer) ensure that the O&M Contractor’s Representative shall have, full authority to act on behalf of the O&M Contractor for all purposes of this Agreement; and
 - ii. subject to any exceptions or limitations previously notified to them, the Developer and the Developer’s Representative shall be entitled to treat any act of the O&M Contractor’s Representative in connection with this Agreement as being expressly authorized by the O&M Contractor and the Developer and the Developer’s Representative shall not be required to determine whether any express authority has in fact been given.
- b. Except as previously notified by the Developer to the O&M Contractor before any relevant act or instruction occurs or is given:

- i. the O&M Contractor shall be entitled to assume that the Developer's Representative has, and the Developer shall (subject to reasonable exceptions and limitations to be notified to the O&M Contractor) ensure that the Developer's Representative shall have, full authority to act on behalf of the Developer for all purposes of this Agreement; and
 - ii. subject to any exceptions or limitations previously notified to them, the O&M Contractor and the O&M Contractor's Representative shall be entitled to treat any act of the Developer's Representative in connection with this Agreement as being expressly authorized by the Developer and the O&M Contractor and the O&M Contractor's Representative shall not be required to determine whether any express authority has in fact been given.
- c. Any relevant instruction to be given by either party shall be given in accordance with Part 2, Section 49.1.1.

18.2.3. Intentionally Omitted.

PART G: PUBLIC OVERSIGHT

19. RECORD KEEPING AND OVERSIGHT

19.1. Project Records

19.1.1. General obligation to maintain Project Records

The O&M Contractor shall (and shall require that each of its Subcontractors and each of their respective Subcontractors shall) at all times create and maintain full and complete records, books, documents, papers, databases, files and other documentation of information relating to the Project and, as applicable, the O&M Contractor's performance of its obligations under this Agreement and each Subcontractor's performance under the Subcontracts to which it is a party, including:

- a. as required by Law, including CORA to the extent it is applicable to Project Records in the custody of O&M Contractor-Related Entities as a matter of Law;
- b. pursuant to Good Industry Practice;
- c. pursuant to GAAP, as applicable;
- d. as otherwise required by the provisions of this Agreement other than this Part 2, Section 19.1.1, including pursuant to Section 13 of Schedule 8 (*Project Administration*); and
- e. maintenance of copies of:
 - i. this Agreement (and all amendments and waivers thereto) and, with respect to each Subcontractor's records, of each Subcontract to which it is a party (and all amendments and waivers thereto); and
 - ii. all notices, correspondence, submissions, change, purchase or work orders, or other documents and materials expressly referenced as work product in this Agreement and, with respect to each Subcontractor's records, each Subcontract to which it is a party,

together, the "Project Records".

19.1.2. Standards for maintenance of Project Records

The O&M Contractor shall (and shall ensure that each of its Subcontractors and each of their respective Subcontractors shall):

- a. create and maintain Project Records in the format or formats (hardcopy, analog, digital or otherwise) determined from time to time by reference to the requirements and standards set out in Part 2, Sections 19.1.1.a through 19.1.1.e;
- b. maintain originals or copies of all Project Records that are otherwise required to be maintained in a physical format at a location in the State; and
- c. develop and maintain procedures to backup and secure all Project Records that, at a minimum, comply with Law and Good Industry Practice.

19.1.3. Inspection of Project Records

The O&M Contractor shall, without charge:

- a. make all its Project Records available for inspection by the Developer, the Enterprises, CDOT or any of their representatives or designees (each, an "Inspecting Party") pursuant to this Part 2, Section 19.1.3;
- b. make its Project Records available for inspection by the Inspecting Parties at its principal offices in the State, or at such other facilities as the Developer may reasonably require on

behalf of themselves or any other Inspecting Party to the extent records are maintained at such other facilities:

- i. during normal business hours (and, upon reasonable request, at times outside normal business hours); and
 - ii. upon reasonable notice, unless the Developer or, pursuant to Section 19.1.3 of the Project Agreement, the Enterprises have a good faith suspicion of fraud in which case no prior notice shall be required;
- c. allow any Inspecting Party to make extracts and take notes during any inspection and, upon request, furnish copies of Project Records to any Inspecting Party; and
- d. subject to its obligations to comply with Part 2, Section 19.1.2.c, and without limiting its obligations pursuant to Schedule 8 (Project Administration), the O&M Contractor acknowledges that it has received and reviewed, and will thereafter comply with, the Developer's written protocol with respect to making all Project Records maintained in digital formats available for real-time, "24/7" secure remote access by the Inspecting Parties to the extent reasonably practicable, as Accepted and Approved by the Enterprises.

19.1.4. Subcontractor Project Records

- a. The O&M Contractor shall ensure that each of its Subcontractors and each of their respective Subcontractors shall, either directly or through the O&M Contractor and in either case without charge, make its Project Records available to the Inspecting Parties for inspection on terms equivalent to those set out in Part 2, Section 19.1.3.a to 19.1.3.c.
- b. To the extent any Project Records are in the exclusive possession of a Subcontractor that fails to make such records available pursuant to Part 2, Section 19.1.4.a, the O&M Contractor shall notify the Developer of such occurrence, identify the Project Records that are unavailable, and describe what efforts the O&M Contractor has made to secure compliance or otherwise obtain such Project Records.

19.1.5. Limitations on disclosure

Notwithstanding anything to the contrary contained in this Agreement, the O&M Contractor shall not be required to disclose, or to ensure the disclosure by any of its Subcontractors and/or of their respective Subcontractors of, any Project Records protected by attorney-client or other legal privilege or protection under Law based upon an opinion of counsel (such counsel to be Acceptable to the Developer) unless such disclosure is otherwise compelled by Law.

19.1.6. Retention of Project Records

- a. Each individual Project Record shall be retained for a period of at least seven years after such Project Record is first generated, or for such longer period as may be required pursuant to Part 2, Sections 19.1.1.a through 19.1.1.e or Part 2, Section 19.1.6.b.
- b. Notwithstanding Part 2, Section 19.1.6.a, the O&M Contractor shall (and shall ensure that each of its Subcontractors and each of their respective Subcontractors shall) retain and make available pursuant to this Part 2, Section 19.1 all Project Records:
 - i. that relate to a Claim or Dispute until any later date that such matters are Agreed or Determined; and
 - ii. in existence on the last Calendar Day of the Term (or the equivalent under any Subcontract) until the later of the seventh anniversary of such day and any date as may be required pursuant to Part 2, Sections 19.1.1.a through 19.1.1.e.

19.1.7. Survival of obligations

The O&M Contractor's obligations under this Part 2, Section 19.1 shall survive until the later of:

- a. the seventh anniversary of the O&M Termination Date; and

- b. with respect to the retention of any Project Record, such date as determined pursuant to Part 2, Section 19.1.6.

19.2. Financial Statements

In addition to all of the O&M Contractor's other obligations to prepare and deliver reports and other materials under this Agreement, the O&M Contractor shall provide the Developer with copies of the following:

- a. its unaudited quarterly and annual accounts within 20 Working Days after such accounts have been finalized; and
- b. its audited annual accounts within 20 Working Days after publication (or, if not published, after such accounts have been finalized),

each of which the Developer shall be entitled to provide to the Lenders and any Registered Rating Agency.

19.3. Enterprise Board Meeting Attendance

The O&M Contractor acknowledges the Developer's obligation to appear before the Enterprise's board and the Transportation Commission pursuant to Section 19.3 of the Project Agreement. Upon request from the Developer, the O&M Contractor agrees to cooperate and assist the Developer in order to enable the Developer to comply with the Developer's obligations under the Project Agreement.

20. COLORADO OPEN RECORDS ACT

20.1.1. Intentionally Omitted

20.1.2. The O&M Contractor shall (and shall ensure that each O&M Contractor-Related Entity shall) comply with any Accepted protocol for the disclosure and, as applicable, exemption from disclosure of Project Records in compliance with CORA and other Laws applicable to the disclosure of such Project Records.

20.1.3. None of the Developer, the Enterprises nor CDOT shall be responsible or liable to the O&M Contractor or any other Person for the disclosure of any Project Records if the disclosure:

- a. is required by Law;
- b. subject to Part 2, Section 19.1.5 (and excluding, for certainty, any disclosure of CORA Exempt Materials) is permitted by Law;
- c. is required by court order;
- d. occurs through inadvertence or mistake;
- e. is made to the FHWA or the US DOT; or
- f. is compliant with the protocol Accepted pursuant to Part 2, Section 20.1.2.

20.1.4. In the event the Developer, the Enterprises or CDOT receives a CORA request for Project Records that are in the custody and control of O&M Contractor-Related Entities, the O&M Contractor shall cooperate with the Developer, the Enterprises, CDOT and, as applicable, the State's Attorney General's office, and shall cause all Subcontractors and each of their respective Subcontractors to cooperate, in responding to such request in a timely manner under CORA or otherwise in accordance with the protocol Accepted pursuant to Section 20.1.2 of the Project Agreement.

20.1.5. The O&M Contractor shall be responsible for all costs associated with defending any request for disclosure of any Project Records claimed by the O&M Contractor to be exempt from disclosure under CORA, whether such records are in the custody of the O&M Contractor (or any other O&M Contractor-Related Entity), the Developer (or any other Developer-Related Entity), the Enterprises or CDOT. In connection with this obligation, the O&M Contractor shall:

- a. use Reasonable Efforts to assist the Developer and the Enterprises (and to secure the assistance of the Enterprises by each of the O&M Contractor's Subcontractors and of each of their Subcontractors) in such defense;
- b. pursuant to Part 2, Section 24.2, indemnify the Developer and the Enterprises for any Losses incurred or suffered by them in such defense; and

at the request of the Enterprises or the State Attorney General's office, intervene in any such defense at its own cost and with its own counsel.

20.1.6. The O&M Contractor shall not (and shall ensure that each of its Subcontractors and each of their respective Subcontractors shall not) disclose any Project Records to any Person, other than:

- a. as expressly permitted by this Agreement;
- b. as required by Law or a court order;
- c. in compliance with the protocol Accepted pursuant to Section 20.1.2 of the Project Agreement or, prior to Acceptance of such protocol, among O&M Contractor-Related Entities and regulators, in the ordinary course of business in connection with the Project and subject to customary safeguards regarding the confidential treatment of such records; or
- d. with the Developer's prior Approval,

and, in each case, where such information relates to a member of the public, the O&M Contractor shall not disclose or make use of any such information other than for the purpose for which it was provided and then only in compliance with Law, unless O&M Contractor has obtained the prior written consent of such Person and of the Developer.

21. INSPECTIONS AND AUDITS

21.1. Site Inspections and Annual Survey and Audit Rights

21.1.1. Inspections of the Site

- a. The O&M Contractor acknowledges and agrees that subject to Part 2, Section 21.1.1.b, the Developer, the Enterprises, CDOT, the FHWA and their respective authorized agents shall have an unrestricted right to enter the Site from time to time in order to:
 - i. inspect the state and progress of the O&M Activities and to monitor compliance by the O&M Contractor with its obligations under this Agreement, including by conducting inspections, surveys, sampling, measurements, observations, testing and other reasonably necessary oversight activities;
 - ii. conduct routine, in-depth or any other type of inspection or other oversight activity in accordance with their standard practices; and/or
 - iii. any other inspection or oversight activity expressly contemplated by this Agreement,

provided that any such activities are conducted pursuant to Part 2, Section 21.1.3.

- b. In exercising their rights under this Part 2, Section 21.1.1, the Developer shall at all times, and shall cause the Enterprises at all times, to comply with all relevant site rules and safety regulations in relation to the Site.

21.1.2. Annual Survey and Audit Rights

The O&M Contractor acknowledges and agrees that the Enterprises have certain survey and audit rights pursuant to Section 21.1.2 of the Project Agreement.

- a. Once in every Calendar Year, and at additional times if the Enterprises or the Developer reasonably believe that the O&M Contractor is in breach of its obligations under this Agreement, the Enterprises or the Developer may carry out or cause the carrying out of:
 - i. a survey of the O&M Activities (or part of the O&M Activities) by a suitably qualified independent expert (not being an employee or consultant of either the Developer, the Enterprises or CDOT that has otherwise been materially involved in the Project (except for purposes of conducting a prior survey)); and
 - ii. an audit of Project Records and the O&M Contractor's compliance with its obligations under this Agreement.
- b. The Developer shall notify the O&M Contractor in writing a minimum of seven Working Days in advance of the date they wish to carry out a survey or audit described in Part 2, Section 21.1.2.a, provided that no such prior notice shall be required if the Developer or the Enterprises reasonably believe that the O&M Contractor is in breach of its obligations under this Agreement. Unless an O&M Contractor Default has occurred and is continuing, the Developer and the Enterprises shall consider in good faith any reasonable request by the O&M Contractor for the survey or audit to be carried out on a different date if such request is made at least five Working Days prior to the notified date and the O&M Contractor (acting reasonably) is able to demonstrate that carrying out the survey on the notified date would materially prejudice the O&M Contractor's ability to perform its obligations or exercise its rights under this Agreement. The survey and audit described in Part 2, Section 21.1.2.a may be conducted separately during any relevant Calendar Year.

21.1.3. Rules governing conduct of inspections, surveys and audits

- a. When carrying out any inspection, survey or audit pursuant to Part 2, Section 21.1.1 or Part 2, Section 21.1.2, the Developer shall use Reasonable Efforts to minimize any unnecessary disruption to the O&M Activities and the O&M Contractor's performance of its obligations under this Agreement.
- b. Subject to Part 2, Sections 21.1.3.c and 21.1.4.a.iii, as between the Developer and the O&M Contractor, the cost of the inspection, survey or audit conducted pursuant to Part 2, Section 21.1.1 or Part 2, Section 21.1.2 shall be borne by the Developer.
- c. The O&M Contractor shall, at its own cost and expense, use Reasonable Efforts to provide assistance to the Developer and the Enterprises as required from time to time during the carrying out of any inspection, survey or audit conducted pursuant to this Part 2, Section 21.

21.1.4. Findings of breach

- a. If an inspection, survey or an audit conducted pursuant to Part 2, Section 21.1.1 or Part 2, Section 21.1.2 is conducted in response to or identifies any O&M Contractor breach or O&M Contractor Default, the Developer may, as applicable and in its discretion:
 - i. notify the O&M Contractor of the condition which the O&M Activities (or any part of the O&M Activities) should be in to comply with the O&M Contractor's obligations under this Agreement or, without altering the O&M Contractor's obligations hereunder, of other steps the Developer believes should be taken with respect to the O&M Contractor's obligations under this Agreement;
 - ii. without altering the O&M Contractor's obligations hereunder, specify a reasonable period within which the O&M Contractor must carry out any rectification and/or maintenance work, or where rectification or maintenance work

cannot rectify the non-compliance, to take reasonable steps to prevent the recurrence of such a non-compliance; and/or

- iii. be entitled to be reimbursed by the O&M Contractor for the reasonable cost and expense of the inspection, survey or audit and any costs and expenses incurred by the Developer (including amounts the Developer is obligated to reimburse the Enterprises pursuant to Section 21.1.4 of the Project Agreement) in relation to such inspection, survey or audit (or, in the case of a breach that is not a O&M Contractor Default, such parts of the inspection, survey or audit that the Developer reasonably determines were necessary to identify such breach).
- b. Notwithstanding any action by the Developer pursuant to Part 2, Section 23.4, the O&M Contractor shall promptly (or within such other period of time as is required or expressly permitted by Law and the provisions of this Agreement) rectify any non-compliance identified by any survey or audit conducted pursuant to this Part 2, Section 21.1.

21.2. Intentionally Omitted

21.3. Increased Oversight

The O&M Contractor acknowledges and agrees that the Enterprises have certain oversight rights pursuant to Section 21.3 of the Project Agreement.

21.3.1. The Developer or, pursuant to the Project Agreement, the Enterprises may, in their discretion, at any time when:

- a. there are material O&M Defects in the O&M Work After Construction; or
- b. the O&M Contractor has materially failed to comply with the Technical Requirements (other than with respect to any breach that constitutes an O&M Noncompliance Event) which failure remains uncured; and/or
- c. the Increased Oversight Threshold has been met or exceeded,
without prejudice to any other right or remedy available to them, and without limiting the O&M Contractor's other obligations under this Agreement (including obligations to remedy O&M Defects and to otherwise perform in accordance with the requirements set out in this Agreement), by notice to the O&M Contractor:
- d. require the O&M Contractor to promptly prepare and submit for Approval a remedial plan to, as applicable:
 - i. remedy such O&M Defects or failure and prevent its recurrence; or
 - ii. improve performance so as to address the causes of the Increased Oversight Threshold being met or exceeded,

and, following Approval of such plan, the O&M Contractor shall be required to comply with such plan; and/or

- e. increase the level of their monitoring of the O&M Contractor relative to the prior standard of practice under this Agreement prior to such O&M Defect or failure, or to the Increased Oversight Threshold being met or exceeded, until such time as the O&M Contractor shall have demonstrated to the reasonable satisfaction of the Developer that it is capable of performing and shall perform all its obligations under this Agreement.

21.3.2. If the Developer, in its discretion, issues a notice pursuant to Part 2, Section 21.3.1 or the Enterprises issue a notice in relation to the O&M Activities pursuant to Section 21.3.1 of the Project Agreement, the O&M Contractor shall bear its own costs and expenses and pay to the Developer on demand all reasonable costs and expenses incurred by or on behalf of the Developer in relation to any increased level of monitoring and any amounts that the Developer is obligated to reimburse the Enterprises pursuant to Section 21.3.2 of the Project Agreement.

PART H: PERFORMANCE MANAGEMENT

22. PERFORMANCE-BASED PAYMENT DEDUCTIONS AND PERSISTENT BREACH

22.1. Performance-based Payment Deductions

22.1.1. Intentionally Omitted.

22.1.2. Pursuant to Parts 2 and 3 of Schedule 6 (*Performance Mechanism*), certain Operating Period performance related deductions may be made from each Performance Payment.

22.2. Persistent Breach by O&M Contractor

22.2.1. If a breach of this Agreement by the O&M Contractor (other than any breach that constitutes a O&M Noncompliance Event or results in the accrual of an Operating Period Closure Deduction or that arises due to a Supervening Event) has:

- a. continued for more than 20 consecutive Calendar Days; or
- b. occurred two or more times in any six consecutive month period,

then the Developer may serve a notice (an "Initial Warning Notice") on the O&M Contractor:

- c. specifying that it is an Initial Warning Notice;
- d. giving reasonable details of the breach; and
- e. stating that the relevant breach is a breach which, if it continues for the period of time specified in Part 2, Section 22.2.2.a or recurs as specified in Part 2, Section 22.2.2.b, may result in a O&M Contractor Default for Persistent O&M Contractor Breach,

provided that an Initial Warning Notice may not be served in respect of any incident of breach which has previously been the subject of a separate Initial Warning Notice or a Final Warning Notice.

22.2.2. If the breach specified in an Initial Warning Notice:

- a. continues beyond 20 consecutive Calendar Days after the date of service of the Initial Warning Notice; or
- b. recurs two or more times within the six consecutive month period after the date of service of the Initial Warning Notice,

then the Developer may serve another notice (a "Final Warning Notice") on the O&M Contractor:

- c. specifying that it is a Final Warning Notice;
- d. stating that the breach specified has been the subject of an Initial Warning Notice; and
- e. stating that:
 - i. the continuation of such breach for more than 20 consecutive Calendar Days after the date of service of the Final Warning Notice; or
 - ii. the recurrence of such breach one or more times within the six consecutive month period after the date of service of the Final Warning Notice,

shall constitute a "Persistent O&M Contractor Breach", which itself shall constitute an O&M Contractor Default pursuant to Part 2, Section 32.1.1.

23. SAFETY COMPLIANCE, SUSPENSION OF THE WORK AND PUBLIC SECTOR RIGHTS TO INTERVENE

23.1. Safety Compliance

23.1.1. The O&M Contractor acknowledges and accepts that pursuant to Section 23.1 of the Project Agreement, the Enterprises may, in their discretion, issue Safety Compliance Orders to

Developer from time to time, which Safety Compliance Order shall be binding on the O&M Contractor in accordance with this Agreement.

23.1.2. The Developer shall provide the O&M Contractor with each Safety Compliance Order promptly upon receipt and shall provide the O&M Contractor with any information it receives from the Enterprises relating to a potential Safety Compliance Order.

23.1.3. The O&M Contractor shall promptly implement each Safety Compliance Order that it receives from the Developer pursuant to Part 2, Section 23.1.2, including through the use of Reasonable Efforts by the O&M Contractor to overcome any inability to comply with any Safety Compliance Order caused by a Supervening Event. The Developer shall be entitled to take action pursuant to Part 2, Section 23.4.1.d if the O&M Contractor fails to comply with its obligations pursuant to this Part 2, Section 23.1.3.

23.2. Refusal of Access

The Developer reserves the right to refuse access to the Right-of-Way by any Person:

- a. if the Developer reasonably believes that:
 - i. the presence or activities of such Person on the Right-of-Way or any Additional Right-of-Way represents a material risk to the health or safety of any person, the Environment or Improvements, the community or property;
 - ii. such Person is under the influence of alcohol or drugs; or
 - iii. such Person is acting or threatening to act in a violent, harassing, discriminatory or illegal manner, or such Person previously acted in such a manner; or
- b. who previously committed any of the conduct described in Part 2, Section 23.2.a while accessing any part of the Site.

23.3. Suspension of Work

23.3.1. The Developer and the Enterprises shall at all times have the right and authority to suspend, in whole or in part, the O&M Work by written order to the O&M Contractor. Any such order shall state the Developer's or the Enterprises' reasons for the required suspension of the O&M Work.

23.3.2. Except where any suspension of the O&M Work by the Developer or the Enterprises pursuant to Part 2, Section 23.3.1 is made (and continues):

- a. in response to:
 - i. any uncured failure by the O&M Contractor to comply with any Law, Governmental Approval or Permit; and/or
 - ii. the existence of conditions unsafe for workers, other Project personnel or the general public, including failures to comply with Project Standards related to safety or to comply with any Safety Compliance Order; or
- b. pursuant to Part 2, Section 25.3.3.b,

the issuance of any such suspension order (or the continuation of any such suspension order) shall, subject to Equivalent Project Relief, constitute a Compensation Event.

23.4. Enterprises' Self-Help

23.4.1. Self-help rights

The O&M Contractor acknowledges and accepts that pursuant to Section 23.4.1 of the Project Agreement, if the Enterprises reasonably believes that they need to take action in connection with the Project or the O&M Activities as a result of:

- a. an Emergency having occurred and being continuing;

- b. any Project Agreement Developer Default having occurred and not having been cured within any relevant Project Agreement Developer Default Cure Period;
- c. the Developer having failed to comply with its obligations pursuant to Section 9.4.4.a of the Project Agreement with respect to any Defect in the Warrantied Elements or any other breach of the Warranties;
- d. the O&M Contractor or the Developer having failed to comply with its obligations with respect to any Safety Compliance Order; and/or
- e. it being necessary to discharge a constitutional or statutory duty or a duty imposed on the Enterprises, CDOT or the State by any Law, or to facilitate any such discharge by the Enterprises, CDOT or the State,

then the Enterprises shall be entitled to take action pursuant to Part 2, Sections 23.4.2 and 23.4.3.

23.4.2. Notice of election to exercise self-help rights

If the Enterprises notifies the Developer that they wish to take action pursuant to Section 23.4.1 of the Project Agreement, the Developer shall promptly provide a copy of such notice to the O&M Contractor. The O&M Contractor acknowledges and accepts that in the case of an Emergency or a Project Agreement Developer Default, the Enterprises shall only be obliged to use Reasonable Efforts to comply with their notification obligations under Section 23.4.2 of the Project Agreement, and accordingly no prior notice to the O&M Contractor may be available. To the extent that such notice provides a time period for the Developer to take action before the Enterprises begins self-help actions, and the need for the Enterprises' self-help action arises from a breach by the O&M Contractor of its obligations under this Agreement, then the O&M Contractor shall, at its own cost and expense, be entitled to take action to remediate such breach during the time period specified in such notice.

23.4.3. Required actions

- a. The O&M Contractor shall use Reasonable Efforts to give all necessary assistance to the Enterprises while they are taking any Required Action.
- b. Intentionally Omitted.

23.4.4. Reimbursement of Enterprises' costs and expenses

If the Enterprises take any Required Action in response to or because of any O&M Contractor breach of its obligations under this Agreement or any O&M Contractor Default, any costs and expenses of the Developer incurred in connection with the Enterprises taking, or as a result of taking, such action (including amounts that must be reimbursed to the Enterprises by the Developer pursuant to the Project Agreement) shall be payable on demand by the O&M Contractor to the Developer.

23.5. Developer Self-Help

Notwithstanding anything to the contrary herein, but subject to the rights of the Lenders under the Lenders' O&M Direct Agreement, upon the occurrence of any O&M Contractor Default and the expiration, without full and complete cure, of the relevant O&M Contractor Default Cure Period, if any, available to the O&M Contractor, without waiving or releasing the O&M Contractor from any obligations, the Developer shall have the right, but not the obligation, for so long as such O&M Contractor Default remains uncured by the O&M Contractor or the Developer, to pay and perform all or any portion of the O&M Contractor's obligations and the O&M Activities that are the subject of such O&M Contractor Default, as well as any other then-existing breaches or failures to perform for which the O&M Contractor received prior written notice from the Developer but has not commenced or does not continue diligent efforts to cure. Exercise of such cure rights is subject to the terms and conditions of Section 23.4 of the Project Agreement.

PART I: INDEMNIFICATION AND INSURANCE

24. INDEMNIFICATION AND NOTICE AND DEFENSE OF CLAIMS

24.1. Developer Indemnity

Subject to Part 2, Sections 35.2, 35.4, 35.5, and 35.6, the Developer will indemnify, defend and hold harmless the Indemnified Parties from and against any Losses actually suffered or incurred by the Indemnified Parties (except to the extent such Losses are caused by the misconduct, negligence or other culpable act, error or omission of the Indemnified Parties), due to third party Claims that are based upon any actual or alleged failure by the Developer to comply with, observe or perform any of the covenants, obligations, agreements, terms or conditions in this Agreement.

24.2. O&M Contractor Indemnity

Subject to Part 2, Section 24.3 and Part 2, Sections 35.2 through 35.6, the O&M Contractor shall, to the fullest extent permitted by Law, release, protect, defend, indemnify and hold harmless the Indemnified Parties from and against any and all Claims against an Indemnified Party and/or Losses suffered by an Indemnified Party to the extent arising from, or as a consequence of, performance or non-performance of any of the O&M Contractor's obligations under this Agreement or breach by the O&M Contractor of this Agreement, including any such Claims and/or Losses that are in respect of:

- a. death or personal injury;
- b. loss of or damage to any Indemnified Party's property (whether personal or real), equipment or facilities, regardless of whether such property, equipment or facilities are owned, leased or otherwise held by such Indemnified Party, including loss of use thereof;
- c. any Claim against the an Indemnified Party by any third party in connection with the use of any Project Intellectual Property in compliance with the terms of this Agreement;
- d. any violation of Law, including any Federal or state securities Law or similar, or any Environmental Law, by any O&M Contractor-Related Entity;
- e. Intentionally Omitted;
- f. Intentionally Omitted; or
- g. to the extent not otherwise a Claim or Loss that is in respect of any of the matters specified in Part 2, Sections 24.2.a through 24.2.f, Claims asserted and/or Losses suffered by any third party (including (i) any counterparty to a Third Party Agreement and (ii) any officer, director, agent or employee who is an Indemnified Party), which such third party asserts against and/or claims from one or more of the Principal Indemnified Parties provided that such Claim and/or Loss shall only fall within the scope of this Part 2, Section 24.2.g if and to the extent that any such Claim and/or Loss arose as a result of either:
 - i. the O&M Contractor's or any other O&M Contractor-Related Entity's breach or failure to perform any obligation that any Principal Indemnified Party owed to such third party (any such obligation, a "Relevant Obligation"); or
 - ii. any act or omission of the O&M Contractor or any other O&M Contractor-Related Entity that renders any Principal Indemnified Party unable to perform any Relevant Obligation or otherwise results in any Principal Indemnified Party having liability for such Claim and/or Loss;
 - iii. the Relevant Obligation or any Principal Indemnified Party's potential liability for such Claim and/or Loss exists or arises under Law or any Governmental Approval, Permit or agreement (including a Third Party Agreement); and

- iv. either:
 - A. if Part 2, Section 24.2.g.i applies, the Developer has delegated performance of the Relevant Obligation to the O&M Contractor pursuant to this Agreement; or
 - B. if Part 2, Section 24.2.g.ii applies, the existence of the Relevant Obligation or the Principal Indemnified Party's potential liability for such Claim and/or Loss under any Law, Governmental Approval, Permit or agreement was known (or, with respect to any Relevant Obligation, should have been known) to the O&M Contractor or such other O&M Contractor-Related Entity prior to the occurrence of the relevant breach, failure to perform, act or omission,

provided that nothing in this Part 2, Section 24.2 shall limit or preclude the O&M Contractor's right to claim any affirmative defense permitted by Law.

24.3. Exclusions from O&M Contractor Indemnity

The O&M Contractor's indemnification and hold harmless obligations under Part 2, Section 24.2 shall not extend to any Loss or Claim of an Indemnified Party to the extent that such Loss or Claim:

- a. was, with respect to a Loss only, already the subject of an indemnity claim under Part 2, Section 24.2 from another Indemnified Party;
- b. was directly caused by:
 - i. a Supervening Event;
 - ii. the fault, fraud, willful misconduct, criminal conduct, recklessness, bad faith or negligence of such Indemnified Party;
 - iii. performance or non-performance by the Developer of any of its obligations under this Agreement or the performance or non-performance by the Enterprises of any of its obligations under the Project Agreement; or
 - iv. such Indemnified Party's violation of any Law;
- c. is comprised of a Claim asserted and/or Loss suffered by any third party (including (i) any counterparty to a Third Party Agreement and (ii) any officer, director, agent or employee who is an Indemnified Party) which third party asserts a Claim that is:
 - i. against one or more of the Principal Indemnified Parties;
 - ii. otherwise within the scope of the indemnity set out in Part 2, Section 24.2; and
 - iii. covered by the worker compensation program of the Principal Indemnified Party against which the Claim is asserted; or
- d. is not of a type specifically referenced in Part 2, Sections 24.2.a through 24.2.f and such Loss or Claim:
 - i. arose from, or as a consequence of, the O&M Contractor's performance (and not of any non-performance or breach) of its obligations under this Agreement; and
 - ii. could not have been avoided by the O&M Contractor.

24.4. Claims by Employees

The O&M Contractor's indemnification obligation under Part 2, Section 24.2 in relation to Losses and/or Claims against an Indemnified Party by an employee of the O&M Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, shall not be limited by any limitation on the amount or type of damages, compensation

or benefits payable by or for the O&M Contractor or a Subcontractor under workers' compensation, disability benefit or other employee benefits laws.

24.5. Notice of Claims and Tender of Defense

If any of the Indemnified Parties receives notice of a Claim or otherwise has actual knowledge of a Claim that it believes is within the scope of the indemnity under Part 2, Section 24.1 or Part 2, Section 24.2, the Indemnified Party shall, without limiting its obligations under Part 2, Section 25.4.2:

- a. provide the Indemnifying Party with notice of any such Claim of which they are aware (together with a copy of all written materials that the Indemnified Parties receive asserting such Claim), provided, however, that any failure to give such notice will not constitute a waiver of any rights of the Indemnified Party except to the extent that the rights of the Indemnifying Party are actually prejudiced by such failure; and
- b. subject to Part 2, Section 24.6.2:
 - i. tender to any applicable insurers or the Indemnifying Party, as applicable, the Indemnified Party's defense of any Claim resulting from the same; and
 - ii. use Reasonable Efforts to cause each other Indemnified Party to tender to the insurers or the Indemnifying Party, as applicable, such Indemnified Party's defense of any Claim resulting from the same.

24.6. Defense of Claims

24.6.1. Tender of defense

- a. Subject to Part 2, Section 24.6.2, if and to the extent defense of any Claim that is subject to the indemnity under Part 2, Section 24.1 or Part 2, Section 24.2 is tendered to the Indemnifying Party, then within 20 Calendar Days after the receipt of such tender, the Indemnifying Party shall notify the Indemnified Party whether it has tendered the matter to an insurer (if applicable).
- b. Subject to Part 2, Section 24.6.2, if the insurer under any Insurance Policy accepts any tender of defense with respect to any Claim that is subject to the Indemnifying Party's indemnity under Part 2, Section 24.1 or Part 2, Section 24.2 or that is otherwise subject to such policy within the applicable time period required by Law:
 - i. the Parties shall use Reasonable Efforts to cooperate in the defense proffered by such insurer, including (with respect to the Indemnifying Party) communication and coordination of the Indemnifying Party's and its insurer's defense strategy with the Enterprises and the Colorado Attorney General's Office; and
 - ii. for purposes of this Agreement, each applicable Indemnified Party shall be deemed to be an insured party under the relevant Insurance Policy.
- c. If any such Claim is not tendered to an insurer, or if an insurer has rejected the tender, the Indemnifying Party shall promptly notify the Indemnified Party whether the Indemnifying Party:
 - i. accepts tender of defense and confirms the Claim is subject to full indemnification under Part 2, Section 24.1 or Part 2, Section 24.2, as applicable, without any reservation of rights to deny or disclaim full indemnification;
 - ii. accepts tender of defense with a reservation of rights, in whole or in part;
 - iii. is incapable of accepting such tender of defense due to an Indemnified Party's exercise of rights pursuant to Part 2, Section 24.6.2, or otherwise has not been tendered defense of any relevant Claim by any Indemnified Party pursuant to Part 2, Section 24.5.b.ii; or

- iv. rejects the tender of defense, in which circumstance the Indemnified Party shall be entitled to select its own counsel and control the defense of such Claim, including the right to settle the Claim without Indemnifying Party consent:
 - A. following consultation by the Developer or the O&M Contractor, as applicable (to the extent they are the relevant Indemnified Parties) with the Indemnifying Party; and
 - B. without prejudice to such Indemnified Party's right to be indemnified by the Indemnifying Party.
- d. If the Indemnifying Party accepts tender of defense pursuant to Part 2, Section 24.6.1.c.i or Part 2, Section 24.6.1.c.ii, then, subject to Part 2, Section 24.6.2, the Indemnifying Party shall have the right to select legal counsel for the Indemnified Party with the prior written consent of such Indemnified Party, provided that the Indemnifying Party shall be responsible for all costs and expenses related to such defense and each such counsel.
- e. Notwithstanding any Indemnifying Party acceptance of tender of defense pursuant to Part 2, Section 24.6.1.c.i or Part 2, Section 24.6.1.c.ii, the Indemnifying Party acknowledges and agrees that each Indemnified Party retains all rights with regard to settlement of any Claim that is subject to the Indemnifying Party's indemnity under Part 2, Section 24.1 or Part 2, Section 24.2, as applicable, and the Indemnifying Party (or counsel appointed by the Indemnifying Party or its insurer) shall seek the consent of such Indemnified Party (with respect to the Developer or the O&M Contractor as Indemnified Party, such consent not to be unreasonably withheld) and with respect to either Enterprise as Indemnified Party, the consent of the Colorado Attorney General's Office, to any settlement terms and conditions.
- f. The Indemnifying Party shall not be liable for any settlement by an affected Indemnified Party of a Claim that is subject to the Indemnifying Party's indemnity under Part 2, Section 24.1 or Part 2, Section 24.2, as applicable except:
 - i. where the Indemnifying Party (or its insurer) has given its prior written consent to such settlement, which consent shall not be unreasonably withheld;
 - ii. with respect to any settlement made pursuant to Part 2, Section 24.6.1.c.iv; or
 - iii. where the settlement is approved by a court of competent jurisdiction and such court approval has become final and binding.

24.6.2. Reservation of rights

The O&M Contractor acknowledges and agrees that:

- a. the Colorado Attorney General's Office:
 - i. is required by Law to represent and defend the Enterprises and CDOT; and
 - ii. may appoint counsel of its selection to act as Special Assistant Attorney General in respect of any particular Claim;
- b. certain other Indemnified Parties may have similar statutory representation obligations and rights; and
- c. consequently, the Enterprises and such other Indemnified Parties have the right in their discretion to:
 - i. elect at any time to conduct their own defense with respect to a Claim that is within the scope of the indemnity under Part 2, Section 24.2; or
 - ii. agree to allow such defense to be conducted in whole, in part or in conjunction with counsel appointed by the O&M Contractor or its insurer, subject (with respect to the Enterprises, CDOT and the State) to Approval of such counsel by the Colorado Attorney General's Office.

25. INSURANCE

25.1. Obligation to Obtain and Maintain Insurance

25.1.1. The Parties shall, at a minimum, obtain and maintain, or cause to be obtained and maintained, all insurance policies specified in Schedule 13 (Required Insurances) (the “Insurance Policies”) pursuant to the requirements of this Part 2, Section 25 and Schedule 13 (Required Insurances). Schedule 13 (Required Insurances) sets forth which Insurance Policies shall be obtained by the O&M Contractor (the “O&M Insurance Policies”) and which Insurance Policies shall be obtained by the Developer (the “Developer Insurance Policies”). The O&M Contractor may satisfy such requirements by:

- a. placing any of the O&M Insurance Policies on a Project-specific basis; and/or
- b. relying on corporate policies of O&M Contractor-Related Entities (or their Affiliates),

provided that all other applicable requirements of this Part 2, Section 25 and Schedule 13 (Required Insurances) are satisfied.

25.1.2. Notwithstanding Part 2, Section 25.1.1, the O&M Contractor acknowledges and agrees that:

- a. the Developer makes no representation or warranty as to the adequacy or sufficiency of the minimum Insurance Policy requirements specified in this Agreement, including as to whether such Insurance Policies shall be adequate to protect the O&M Contractor against:
 - i. the performance or non-performance of its obligations under this Agreement;
 - ii. the risks it is assuming under this Agreement; and
 - iii. its liabilities to any third party;
- b. except as otherwise expressly provided in this Agreement, no limit of liability specified for any Insurance Policy, or approved variances therefrom, shall preclude the Developer from exercising any right otherwise available to them under this Agreement or at Law; and
- c. to the extent required by Law in connection with O&M Activities to be performed during the O&M Term, the O&M Contractor shall obtain and maintain, or cause to be obtained and maintained, in addition to the O&M Insurance Policies, such other insurance policies for such amounts, for such periods of time and subject to such terms, as required by Law.

25.1.3. For certainty, the insurance coverage the O&M Contractor is required to obtain and maintain, or cause to be obtained and maintained, pursuant to Part 2, Sections 25.1.1 and 25.1.2.c may support but shall not limit the O&M Contractor’s indemnification and defense obligations under this Agreement.

25.2. General Insurance Requirements

25.2.1. Placement of insurance with Eligible Insurers

- a. All O&M Insurance Policies shall be obtained from, and maintained with, Eligible Insurers.
- b. If an insurer providing any O&M Insurance Policy ceases to be an Eligible Insurer, then the O&M Contractor shall promptly, and in any event within 15 Calendar Days of such event occurring, secure alternate coverage with an Eligible Insurer unless the Developer otherwise Approves the continued maintenance of such O&M Insurance Policy with the existing insurer.

25.2.2. Language; governing law

All Insurance Policies shall be issued in the English language and governed by the laws of the State of Colorado or the State of New York.

25.2.3. Liability and deductibles

Except to the extent included in any Termination Amount or in any compensation paid with respect to a Supervening Event or Change, as between the O&M Contractor and the Developer:

- a. the O&M Contractor shall be liable for all insurance deductibles, premiums, and liabilities in excess of the coverage provided under any O&M Insurance Policy, and the Developer shall have no liability for the same; and
- b. the Developer shall be liable for all insurance deductibles, premiums and liabilities in excess of the coverage provided under any Developer Insurance Policy, and the O&M Contractor shall have no liability for the same.

25.2.4. Primary coverage

- a. Each Insurance Policy shall provide that the coverage thereof is primary and non-contributory with respect to all named insureds, additional insureds (including the Developer (with respect to the O&M Insurance Policies), the O&M Contractor (with respect to the Developer Insurance Policies), the Enterprises, CDOT and the Specified Additional Insureds) and loss payees, as their interests may appear.
- b. Any insurance or self-insurance that is maintained by an insured or any additional insured (including the Developer (with respect to the O&M Insurance Policies), the O&M Contractor (with respect to the Developer Insurance Policies), the Enterprises, CDOT and any Specified Additional Insured) in addition to any Insurance Policy shall be in excess of such Insurance Policy and not contribute with it.

25.2.5. Endorsements

Each Insurance Policy (excluding those required pursuant to Section 2.3, Section 2.5, and Section 2.6 of Schedule 13 (Required Insurances)) shall be written or endorsed such that:

- a. any:
 - i. failure on the part of a named or any additional insured (including any Specified Additional Insured) to comply with reporting provisions or other conditions of such Insurance Policy;
 - ii. breach of representation or warranty by, breach of any provision in such policy by, or other action or inaction of, a named insured, any additional insured (including any Specified Additional Insured) or others; or
 - iii. change in ownership of all or any portion of the Project or the Developer's or the O&M Contractor's interest in the same,shall not affect or vitiate the coverage provided under such Insurance Policy to the other named insureds or any additional insureds (including any Specified Additional Insured and the Lenders) (or to any such named insured's or additional insured's respective members, directors, officers, employees and agents);
- b. such Insurance Policy shall apply separately to each named insured and additional insured (including any Specified Additional Insured) against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability;
- c. endorsements adding additional insureds (including Specified Additional Insureds) to required policies shall contain no limitations, conditions, restrictions or exceptions to coverage beyond those that apply under the Insurance Policy generally, including, for certainty, any limitation, condition, restriction or exception to coverage due to the absence of a direct contractual relationship between the additional insured and the named insured or, if different, the Person that obtained the insurance; and
- d. Specified Additional Insureds may be added as additional insureds from time to time as anticipated by the definition thereof,

in the case of each of paragraphs a. to d., to the extent not prohibited by Law.

25.2.6. Prior notice of cancellation, suspension, modification etc.

Each O&M Insurance Policy shall be written or endorsed such that coverage under, and limits with respect to, such O&M Insurance Policy cannot be canceled, voided, suspended, lapsed, modified or reduced except following 90 Calendar Days' (or for non-payment of premium, 30 Calendar Days') prior notice to the Developer and the Lenders, where the insurer shall not have any limitation of liability for failure to provide such notice.

25.2.7. Waivers of subrogation

- a. The Developer waives all rights against each O&M Contractor-Related Entity, and the O&M Contractor waives all rights against the Developer, the Enterprises, CDOT and each Specified Additional Insured, in each case for any claims to the extent covered and paid by the Insurance Policies, or by any other insurance obtained and maintained pursuant to Part 2, Section 25.1.2.c, except such rights as they may have to the proceeds of such insurance.
- b. The O&M Contractor shall, and shall require all Subcontractors to, to the extent applicable, provide written waivers (equivalent to the O&M Contractor's waivers set out in Part 2, Section 25.2.7.a) in favor of the Developer, the Enterprises, CDOT and each Specified Additional Insured.
- c. The Developer may, at its discretion (provided that such discretion is exercised and notice of the same is given to the O&M Contractor at least 10 Calendar Days prior to any associated loss), require the O&M Contractor to provide written waivers equivalent to the waivers set out in Part 2, Sections 25.2.7.a and 25.2.7.b in favor of the City of Denver (other than in its capacity as Cover Top Maintainer) and Denver Public Schools.

25.2.8. Defense costs

No defense costs shall be included within or erode the limits of coverage under any Insurance Policy, except that defense costs may be included within the limits of coverage under each Insurance Policy required pursuant to Sections 2.2, 2.4, 2.5 and 2.6 of Schedule 13 (Required Insurances).

25.2.9. Exhaustion of limits

With respect to each Insurance Policy (excluding those that are specific to this Project) required pursuant to Section 2.2 of Schedule 13 (Required Insurances), whenever the aggregate limit is exhausted by at least 25% of the required aggregate limit by claims paid or reserved by insurer(s) (such that, for certainty, 75% or less of such required aggregate limit then remains available), the Party responsible for the relevant Insurance Policy shall promptly:

- a. notify the other Party of such exhaustion; and
- b. and in any event within three Working Days, deliver evidence to the other Party (such evidence reasonable satisfactory to such Party) that the Party responsible for the relevant Insurance Policy has obtained, or caused to be obtained, additional insurance to reinstate the aggregate limit to the minimum amount required by Section 2.2 of Schedule 13 (Required Insurances).

25.3. Verification of coverage

25.3.1. The O&M Contractor shall, not less than eight Working Days prior to the effective (or renewal) date of each O&M Insurance Policy, deliver to the Developer:

- a. a written certificate of insurance that:
 - i. is on the most recent ACORD form consistent with the required coverage and in standard form;
 - ii. states the identity of all insurers, named insureds and additional insureds;

- iii. states the type and limits of coverage;
 - iv. includes as attachments all additional insured endorsements; and
 - v. is signed by an authorized representative of the insurer shown on the binder; and
- b. a letter from the Insurance Broker placing the O&M Insurance Policy addressed to the Developer and the Enterprises certifying that:
- i. such Insurance Broker has reviewed Section 25 of the Project Agreement and Schedule 13 (Required Insurances) to the Project Agreement and this Part 2, Section 25 and Schedule 13 (Required Insurances) hereto;
 - ii. the O&M Insurance Policy so certified has been issued in accordance with Section 25 of the Project Agreement and Schedule 13 (Required Insurances) to the Project Agreement and this Part 2, Section 25 and Schedule 13 (Required Insurances) hereto;
 - iii. all premiums in respect of such O&M Insurance Policy have been paid, or arrangements have been made to pay such premiums in a timely manner; and
 - iv. in the absence of material non-disclosure, misrepresentation or fraud by the named insured, the Enterprises may rely on such letter.

25.3.2. The O&M Contractor shall promptly, and in any event no later than 60 Calendar Days after the effective (or renewal) date of each O&M Insurance Policy, deliver to the Developer (for delivery to the Enterprises) a true and complete certified copy of each such O&M Insurance Policy, including all endorsements thereto, provided that if any O&M Insurance Policy insures subject matter other than the O&M Activities or the Project (or any part of either thereof) any reference to such other subject matter (including any confidential information as determined in compliance with the disclosure protocol Accepted by the Developer pursuant to Part 2, Section 20.1.2) may be removed or redacted from such certified copies so long as such certified copies are accompanied by a letter from the Insurance Broker confirming that such removal or redaction has no effect on the conclusions in the letter that it previously provided pursuant to Part 2, Section 25.3.1.b in respect of such O&M Insurance Policy.

25.3.3. If the O&M Contractor fails to comply with its obligations under Part 2, Sections 25.2.1.b, 25.3.1 or 25.3.2, the Developer shall, without limiting any of their other rights under this Agreement, have the right, but not the obligation, without notice to the O&M Contractor, to:

- a. obtain any insurance that is the subject of such failure at the O&M Contractor cost and expense; or
- b. for so long as such failure continues, exercise their right to suspend, in whole or in part, the O&M Activities pursuant to Part 2, Section 23.3.1.

25.4. Reporting and Handling of Claims

25.4.1. The O&M Contractor's obligations to report and process claims

- a. Unless notified otherwise by the Developer pursuant to Part 2, Section 25.4.2.a with respect to the Developer's, the Enterprises' (or CDOT's) insurance claims (and potential claims), as between the Developer and the O&M Contractor, the O&M Contractor shall:
 - i. promptly report and process all potential claims under the Insurance Policies;
 - ii. promptly and diligently pursue claims pursuant to the claims procedures specified in such Insurance Policies, whether for defense or indemnity or both; and
 - iii. enforce all legal rights against insurers under the Insurance Policies and under Law in order to collect on all claims, including pursuing necessary litigation and enforcement of judgments, provided that the O&M Contractor shall be deemed to have satisfied this obligation if a judgment is not collectible through the exercise of lawful and diligent means,

in each case, to the extent applicable, following (x) notice to and regular consultation with the Developer pursuant to Part 2, Section 25.4.1.b and (y) the use by the O&M Contractor of Reasonable Efforts to reflect Developer's resulting input.

- b. The O&M Contractor shall:
 - i. promptly notify the Developer of any incident, potential claim, claim or other matter of which the O&M Contractor becomes aware that:
 - A. involves or could conceivably involve an Indemnified Party as a defendant;
 - B. involves a claim or potential claim by the O&M Contractor or any other Person under an Insurance Policy, or any other insurance obtained and maintained pursuant to Part 2, Section 25.1.2.c, with, in any such case, a potential value of \$25,000 (indexed) or more;
 - C. involves a claim which is being denied by an insurer; or
 - D. involves a fatality, and
 - ii. regularly consult with the Developer and the Enterprises (as and when reasonably requested by the Developer) regarding, and thereafter keep the Developer and the Enterprises fully informed of, any incident, claim or matter of the type referenced in Part 2, Sections 25.4.1.b.i.A through 25.4.1.b.i.D (including, for certainty, any such incident, claim or matter of which the O&M Contractor becomes aware by notice from the Developer).

25.4.2. Developer and Enterprise involvement in reporting and processing claims

- a. Notwithstanding Part 2, Section 25.4.1, the Developer, the Enterprises (and CDOT, to the extent it is a Specified Additional Insured with respect to any relevant Insurance Policy) shall have the right, but not the obligation, to report directly to insurers and, subject to prior notice to the O&M Contractor, process the Developer's or the Enterprises' (or, as applicable, CDOT's) claims, as applicable under the Insurance Policies.
- b. The Developer agrees to promptly:
 - i. notify the O&M Contractor of any Developer (or to the extent the Developer is notified by the Enterprises, any Enterprise and/or CDOT) incident, or any Claim or potential Claim against the Developer (or to the extent the Developer is notified by the Enterprises, and Claim or potential Claim against CDOT), and/or any other matters that are reasonably expected to give rise to an insurance claim, in each case of which the Developer becomes aware; and
 - ii. subject to Part 2, Sections 24.6.1 and 24.6.2, to:
 - A. tender to any applicable insurers the Enterprises' defense of any Claim against the Enterprises; and
 - B. use Reasonable Efforts to procure that the Enterprises and CDOT tenders to the insurers its defense of any Claim against it.
- c. The Developer shall use Reasonable Efforts to cooperate with the O&M Contractor as necessary for the O&M Contractor to satisfy its obligations under Part 2, Sections 25.4.1 and 24.6.1, including providing the O&M Contractor a copy of all written materials that the Developer receives asserting a Claim against the Developer, the Enterprises and/or CDOT that is subject to defense by an insurer under an Insurance Policy.

25.4.3. Insurance meetings

Without limiting the O&M Contractor's obligations under this Part 2, Section 25.4, the O&M Contractor and the O&M Contractor's insurers and control claims adjuster shall provide the Developer and the Enterprises with claim updates from designated insurance representatives at

such intervals as the Developer or the Enterprises may reasonably request, but no less than twice in each Calendar Year, to review all incidents, potential claims and claim files together with such other matters related to the Insurance Policies as the Developer or the Enterprises may reasonably request.

25.5. Intentionally Omitted

25.6. Unavailability of Insurance

25.6.1. Unavailability due to an Uninsurable risk

- a. If a risk otherwise covered by any O&M Insurance Policy becomes, or is likely to become, Uninsurable then:
 - i. the O&M Contractor shall notify the Developer promptly, and in any event within three Working Days, after becoming aware of that any such risk has become, or is likely to become, Uninsurable, and the Developer shall thereafter notify the Enterprises pursuant to Section 25.6.1 of the Project Agreement;
 - ii. the O&M Contractor shall thereafter provide the Developer or the Enterprises with such information as the Developer or the Enterprises reasonably requests regarding the Uninsurable risk; and
 - iii. the Parties shall promptly meet to discuss the means by which the risk should be managed or shared under the circumstances.
- b. If it is Agreed or Determined that any risk has become Uninsurable, then:
 - i. subject to Equivalent Project Relief, the O&M Contractor shall be relieved of its obligations pursuant to Part 2, Section 25.1.1 to the extent, and only to the extent, that O&M Contractor's inability to comply with such obligations is due directly to, and limited to the duration of, such risk having become Uninsurable; and
 - ii. the O&M Contractor acknowledges and accepts that the Enterprises shall (in their discretion):
 - A. terminate the Project Agreement pursuant to its rights under Section 33.1.7 of the Project Agreement, in which case, this agreement shall terminate pursuant to Part 2, Section 33.1.2; or
 - B. elect to continue the Project Agreement, in which case, the Developer shall, but only for so long as such risk remains Uninsurable:
 - I. subject to the Pay-if-Paid Provisions, following the occurrence of such risk, pay the O&M Contractor an amount equal to the insurance proceeds that would have been payable to the O&M Contractor under the O&M Insurance Policies had such risk not become Uninsurable, subject to the limitations, conditions and exclusions set out in the certificates and policies of insurance relating to the relevant O&M Insurance Policies most recently provided by the O&M Contractor to the Developer (or, if no such certificates or policies of insurance have previously been provided, such limitations, conditions and exclusions as the Developer may reasonably determine would have applied), provided that O&M Contractor shall remain responsible for any deductibles; and
 - II. in respect of each month during any part of which the relevant insurance relating to such risk is not maintained, the O&M Contractor shall pay to the Developer, or (at the Developer's discretion during the Operating Period) the Developer shall set-

off against the O&M Fee pursuant to Section 5 of Part 3 of Schedule 4 (*Payments*), an amount equal to the premium paid by the O&M Contractor in respect of the relevant risk in respect of the month prior to such risk becoming Uninsurable (using a reasonable estimate of such amount where a precise figure is not available and pro-rating any annual or other premium previously payable where appropriate); or

- C. issue an Enterprise Change, as a result of which
 - I. Developer shall be left in a No Better and No Worse position (relative to the position that it would have been in had the Enterprises elected to proceed under Section 25.6.1.b.ii.B of the Project Agreement) with respect to such Uninsurable risk; and
 - II. the ability of Developer to comply with the Project Agreement shall not be adversely affected as a consequence,and, for certainty, this Agreement shall continue.

- c. For so long as any risk remains Uninsurable and this Agreement remains in effect, the O&M Contractor shall approach the insurance market at least once every three months to establish whether the risk continues to be Uninsurable. Promptly upon the O&M Contractor becoming aware that the risk is no longer Uninsurable, the O&M Contractor shall, as soon as is reasonably practicable, take out and maintain, or cause to be taken out and maintained, the insurance required to be maintained for such risk pursuant to this Agreement, and on such insurance becoming effective the provisions of Part 2, Section 25.6.1.a.iii shall cease to apply in respect of such risk.

25.6.2. Unavailable Terms

- a. If any Insurance Term that would otherwise be included in an O&M Insurance Policy becomes, or is likely to become, an Unavailable Term then:
 - i. the O&M Contractor shall notify the Developer promptly, and in any event within three Working Days, after becoming aware of the existence of an Unavailable Term or the likelihood of an Insurance Term becoming an Unavailable Term, and the Developer shall thereafter notify the Enterprises promptly pursuant to Section 25.6.2 of the Project Agreement;
 - ii. the O&M Contractor shall thereafter provide the Developer or the Enterprises with such information as the Developer or the Enterprises reasonably requests regarding the Unavailable Term; and
 - iii. the Parties shall promptly meet to discuss the means by which the existence of such Unavailable Term should be managed or its consequences shared under the circumstances.
- b. If it is Agreed or Determined that an Insurance Term has become an Unavailable Term, then:
 - i. subject to Equivalent Project Relief, the O&M Contractor shall be relieved of its obligations pursuant to Part 2, Section 25.1.1 to include the relevant Insurance Term in the relevant O&M Insurance Policies to the extent, and only to the extent, that the O&M Contractor's inability to comply with such obligations is due directly to, and limited to the duration of, such term having become an Unavailable Term; and
 - ii. subject to the Pay-if-Paid Provisions, in respect of each month during any part of which the relevant Insurance Term is an Unavailable Term, the O&M Contractor shall pay to the Developer, or (at the Developer's discretion during the Operating Period) the Developer shall set-off against the O&M Fee pursuant to Section 5 of

Part 3 of Schedule 4 (Payments), an amount of premium equal to the amount paid by the O&M Contractor in respect of the Unavailable Term in respect of the month prior to such term becoming an Unavailable Term (using a reasonable estimate of such amount where a precise figure is not available and pro-rating any annual or other premium previously payable where appropriate) net of any annual amount paid or payable by the O&M Contractor with respect to such month to maintain, or cause to be maintained, any (whether full or partial) alternative or replacement term and/or condition in respect of such Insurance Term pursuant to Part 2, Section 25.6.2.d.

- c. For so long as an Insurance Term is an Unavailable Term, the O&M Contractor shall approach the insurance market at least once every three months to establish that the relevant term remains an Unavailable Term. Promptly upon the O&M Contractor becoming aware that the term is no longer an Unavailable Term, the O&M Contractor shall, as soon as is reasonably practicable, take out and maintain, or cause to be taken out and maintained, the relevant insurance including such previously Unavailable Term pursuant to this Agreement, and on such insurance becoming effective the provisions of Part 2, Section 25.6.2.b shall cease to apply in respect of such Insurance Term.
- d. Notwithstanding Part 2, Section 25.6.2.b, to the extent that it is Agreed or Determined that an alternative to or replacement of the Unavailable Term is available to the O&M Contractor in the worldwide insurance market with Eligible Insurers, which if included in the relevant O&M Insurance Policy would fully or partially address the O&M Contractor's inability to fully comply with its obligations pursuant to Part 2, Section 25.1.1, at a cost which contractors in relation to transportation-related infrastructure projects in the United States are (at such time) generally prepared to pay, the O&M Contractor shall obtain and maintain, or cause to be obtained and maintained, insurance including such alternative or replacement Insurance Term.

25.7. Benchmarking of Insurance Costs

- 25.7.1. The procedure set out in this Part 2, Section 25.7 shall be used to determine how the Parties shall share any increase, or benefit from any decrease, in the cost of Benchmarked Insurances.
- 25.7.2. The O&M Contractor shall cause the Insurance Broker to prepare (at the O&M Contractor's cost and expense) and deliver to the Developer no later than 5 Working Days after the end of the most recent Insurance Review Period a report in respect of such Insurance Review Period (the "Joint Insurance Cost Report"). Each Joint Insurance Cost Report shall be addressed to the O&M Contractor, the Developer and the Enterprises on a reliance basis.
- 25.7.3. Each Joint Insurance Cost Report shall, at a minimum, contain the following information in respect of the relevant Insurance Review Period:
 - a. a full breakdown of the Actual Benchmarked Insurance Cost;
 - b. a full breakdown of the Base Benchmarked Insurance Cost;
 - c. the Proposal Insurance Cost;
 - d. a spreadsheet detailing separately:
 - i. the sum(s) insured/limit(s) of indemnity (i.e. rateable factor) for each of the Benchmarked Insurances;
 - ii. the premium rate for each of the Benchmarked Insurances;
 - iii. the net premium paid (or to be paid) for each of the Benchmarked Insurances (i.e. excluding both insurance premium tax and broker's costs and expenses);
 - iv. the actual deductible(s) applicable to the calculations made in the Joint Insurance Cost Report; and

- v. details of all claims paid or reserved (including incident date and type and amount of claim);
 - e. an assessment, quantification and breakdown of each increase or decrease in insurance costs that, in aggregate, determine the amount of any Project Insurance Change together with an explanation of the reasons therefor;
 - f. the calculation of any Insurance Cost Increase or any Insurance Cost Decrease and of any resulting Exceptional Cost or Exceptional Saving arising from this calculation;
 - g. the opinion of the Insurance Broker as to the reasons why the Actual Benchmarked Insurance Cost has varied from the Proposal Benchmarked Insurance Cost, specifying the impact of each explanatory factor and quantifying the amount attributable to each such factor; and
 - h. such other evidence as reasonably requested by the Developer or the Enterprises of any changes to circumstances generally prevailing in the Relevant Insurance Markets that the Insurance Broker indicates to account for the Insurance Cost Increase or the Insurance Cost Decrease.
- 25.7.4. The Enterprises and the Developer, at their discretion and at their cost and expense, may independently assess the accuracy of the information in the Joint Insurance Cost Report and otherwise conduct their own independent insurance review, which review may include retaining advisors and/or performing their own assessments as to, among other things, the impact of the claims history on renewal costs. The O&M Contractor shall cooperate with respect to any reasonable requests from the Enterprises or the Developer for additional information in relation to such independent assessments (including, if applicable, by ensuring that the Insurance Broker provides any reasonably requested additional information).
- 25.7.5. The O&M Contractor acknowledges and agrees that pursuant to Section 25.7.5 of the Project Agreement, the Enterprises shall determine in respect of the Insurance Review Period to which such report relates, and with reference to such report, whether there is an Exceptional Cost or an Exceptional Saving, and the Developer shall promptly notify the O&M Contractor of the Enterprises determination as it pertains to the Benchmarked Insurance hereunder. Thereafter:
- a. if the Enterprises has determined there is an Exceptional Cost with respect to the Benchmarked Insurance, the Developer shall, subject to the Pay-if-Paid Provisions, pay to the O&M Contractor any amounts received by the Developer from the Enterprises with respect to such Exceptional Cost within 10 Working Days following the Developer's receipt of such amount from the Enterprises;
 - b. if the Enterprises has determined there is an Exceptional Saving with respect to the Benchmarked Insurance, the O&M Contractor shall within 20 Calendar Days of notification by the Developer of such determination make a one-off lump-sum payment to the Developer (for payment to the Enterprises) equal to 80% of the Exceptional Saving; and
 - c. if the Enterprises has determined there is neither an Exceptional Cost nor an Exceptional Saving with respect to the Benchmarked Insurance, any Insurance Cost Increase or any Insurance Cost Decrease shall be borne by or be for benefit of the O&M Contractor.

PART J: EQUITY AND PROJECT DEBT

26. INTENTIONALLY OMITTED

27. INTENTIONALLY OMITTED

28. INTENTIONALLY OMITTED

29. REFINANCING

29.1. Cooperation

The O&M Contractor shall cooperate as reasonably requested by the Developer in connection with any Refinancing, including entering into a new lenders' direct agreement (on substantially the same terms as the Lenders' O&M Direct Agreement) in connection therewith and providing customary legal opinions, certificates and other documents. The Developer agrees to pay any reasonable and documented out-of-pocket costs of the O&M Contractor in connection with any such refinancing.

30. TAXES

30.1.1. The O&M Contractor shall pay, prior to delinquency, all Taxes, including, for certainty, all Ad Valorem and Possessory Interest Taxes and all State Sales Taxes, in each case in respect of the O&M Contractor's performance of the O&M Activities, the O&M Contractor's obligations under this Agreement, the O&M Contractor's interests in and rights to the Site and the Project License and any other O&M Contractor-Related Entity interest in this Agreement and the Project. Subject to Part 2, Section 30.1.6 and the O&M Contractor's rights arising as a result of the occurrence of any Compensation Event as described in paragraph c.i. of the definition thereof in Part A of Annex A (Definitions and Abbreviations), the Developer shall not be responsible for any Taxes levied on the O&M Contractor or on any other O&M Contractor-Related Entities.

30.1.2. Subject to Part 2, Section 30.1.6, the O&M Contractor accepts sole responsibility for, and agrees that it shall have no right to claim a Supervening Event or to any other Claim for relief due to, its misinterpretation of Laws in relation to Taxes or incorrect assumptions regarding applicability of Taxes.

30.1.3. The O&M Contractor shall promptly notify the Developer (for notification of the Enterprises) after it becomes aware that it (or any other O&M Contractor-Related Entity) may be legally obligated to pay:

- a. any:
 - i. ad valorem property tax imposed by a Governmental Authority under the laws of the State; or
 - ii. possessory interest property tax pursuant to Articles 1-14 of Title 39, C.R.S. (including, for certainty, C.R.S. § 39-1-103 (17)),
(each an "Ad Valorem and Possessory Interest Tax"); or
- b. any sales and use tax ("State Sales Tax") imposed by the State under the laws of the State (excluding, for certainty, any sales and use tax imposed by the City of Denver or any other Governmental Authority that is not the State),

in each case in connection with the O&M Work After Construction and the Project.

30.1.4. The O&M Contractor acknowledges the Developer's obligations to cooperate and coordinate with the Enterprises in relation to the reduction and mitigation of Taxes. The O&M Contractor shall cooperate and coordinate with the Developer and provide such information as is reasonably required by the Developer in order for the Developer to satisfy its obligations pursuant to Section 30.1.4 of the Project Agreement. The Developer shall not make any decision not to disclose any Project Records relating to the O&M Contractor, any other O&M Contractor-Related Entity, or the O&M Work After Construction pursuant to Section 30.1.4 of the Project Agreement without the

prior written consent of the O&M Contractor, such consent not to be unreasonably withheld, conditioned or delayed.

30.1.5. The O&M Contractor acknowledges and accepts that following Developer's decision not to disclose any Project Record pursuant to Section 30.1.4 of the Project Agreement, the Enterprises shall be relieved of their obligation to reimburse Developer pursuant to Section 30.1.6 of the Project Agreement with respect to such State Sales Tax. In such case, the O&M Contractor shall assume the Enterprises' efforts to reduce or eliminate the O&M Contractor's liability for any State Sales Tax and the Developer shall be relieved of its obligation to reimburse the O&M Contractor pursuant to Part 2, Section 30.1.6 with respect to such State Sales Tax.

30.1.6. Subject to Part 2, Section 30.1.5, Equivalent Project Relief and the Pay-if-Paid Provisions, the Developer shall reimburse the O&M Contractor for the actual amount of any Ad Valorem and Possessory Interest Tax and State Sales Tax paid by the O&M Contractor or any other O&M Contractor-Related Entity in connection with the O&M Work After Construction and the Project, excluding any such Tax imposed or owing as a result of any breach of Law, Governmental Approval, Permit or this Agreement, fraud, willful misconduct, criminal conduct, recklessness, bad faith or negligence by or of any O&M Contractor-Related Entity no later than the date that is 60 Calendar Days after the Developer's receipt of a demand for such reimbursement, which demand shall include:

- a. all supporting evidence necessary to substantiate such demand, including, in the case of any State Sales Tax, evidence that the O&M Contractor or any relevant O&M Contractor-Related Entity submitted the requisite State Sales Tax exemption certificate for the transaction in question; and
- b. evidence of Reasonable Efforts by the O&M Contractor and any other relevant O&M Contractor-Related Entities to mitigate the imposition and amount of the relevant Tax,
- c. and satisfaction of both paragraphs a and b shall be conditions precedent to the Developer's reimbursement payment to the O&M Contractor.

31. RESTRICTIONS ON REVENUE GENERATING ACTIVITIES

31.1. Restrictions on Tolling

31.1.1. The O&M Contractor acknowledges and agrees that pursuant to Section 31.1 of the Project Agreement, the Enterprises (and CDOT) have exclusive rights to impose tolls or any other user fees (in any form) in relation to the Project, including the right to deposit and allocate any resulting revenues as they determine in their discretion.

31.1.2. The O&M Contractor hereby acknowledges and agrees that:

- a. it has no right to:
 - i. impose tolls or any other user fees (in any form) in relation to the Project; or
 - ii. directly or indirectly engage in any revenue generating business on any part of the Site in connection with the Project, other than the conduct of its business and activities solely related to the performance of its obligations pursuant to this Agreement in relation to the Project and the revenues it receives from the Developer pursuant to this Agreement;
- b. it will not have any lien over or security interest in any toll revenues, user fees or other revenues generated by the Enterprises, CDOT or other Persons on any part of the Site or in connection with the Project.

31.2. Restrictions on Advertising

31.2.1. The O&M Contractor acknowledges and accepts that the Enterprises retain all rights relating to approving, planning and/or selling advertising on the Right-of-Way, any Additional Right-of-Way and any other Assets, and otherwise in connection with the Project.

31.2.2. The O&M Contractor shall:

- a. use Reasonable Efforts to cooperate with; and
- b. without prejudice to the O&M Contractor's rights arising as a result of the occurrence of any Compensation Event as described in paragraphs b.iv. and g.iii. of the definition thereof in Part A of Annex A (Definitions and Abbreviations), grant all necessary access to,

the Developer, the Enterprises and any Person authorized by the Enterprises in connection with the exercise of the Enterprises' retained rights under Section 31.2.1 of the Project Agreement.

PART K: DEFAULTS, REMEDIES AND TERMINATION

32. DEFAULTS AND REMEDIES

32.1. O&M Contractor Defaults and Cure Periods

32.1.1. The occurrence of any one of the events set out in the column titled “O&M Contractor Default” in the table below shall constitute an “O&M Contractor Default”. For purposes of this Agreement, “O&M Contractor Default Cure Period” means, in respect of an O&M Contractor Default, the cure period (if any) specified in the column titled “Cure Period” in the table below in the same row as such O&M Contractor Default, subject to extension in accordance with Part 2, Section 32.1.2.

O&M Contractor Defaults

<u>O&M Contractor Default</u>	<u>Cure Period</u>
(1) An Insolvency Event occurs in respect of the O&M Contractor.	None.
(2) The O&M Work During Construction Subcontract is terminated by the Construction Contractor for any default or event of default of the O&M Work During Construction Subcontractor.	
(3) The O&M Work During Construction Subcontractor fails to perform or observe any term or obligation of the O&M Work During Construction Subcontract, and such failure constitutes a default or an event of default under the O&M Work During Construction Subcontract that gives rise to a termination right on behalf of the Construction Contractor, but such right is not exercised.	
(4) Intentionally Omitted	
(5) Intentionally Omitted	
(6) A Noncompliance Default Event occurs.	
(7) A Closure Default Event occurs.	
(8) A Persistent O&M Contractor Breach occurs or a Persistent Developer Breach occurs that is caused by a breach by the O&M Contractor of any of its obligations under this Agreement.	
(9) Any O&M Contractor-Related Entity commits a Prohibited Act and such entity is: <ul style="list-style-type: none"> <li data-bbox="380 1346 748 1388">(a) the O&M Contractor; or <li data-bbox="380 1388 1138 1787">(b) any other O&M Contractor-Related Entity: <ul style="list-style-type: none"> <li data-bbox="472 1451 1089 1493">(i) acting in concert with the O&M Contractor; or <li data-bbox="472 1493 1138 1787">(ii) acting independently of the O&M Contractor, but with the O&M Contractor’s prior knowledge, unless the O&M Contractor promptly notifies the Developer and, as required by Law, any other relevant Governmental Authorities of such Prohibited Act (in which case O&M Contractor Default number (22) in this Part 2, <u>Section 32.1.1</u> shall apply with respect to such Prohibited Act). 	
(10) After exhaustion of all rights of appeal, there occurs any disqualification, suspension or debarment from bidding, proposing or contracting with any state-level, interstate or	

O&M Contractor Default	Cure Period
<p>Federal Governmental Authority (distinguished from ineligibility due to lack of financial qualifications) (any such event, an “<u>Exclusion</u>”) of:</p> <ul style="list-style-type: none"> (a) the O&M Contractor; (b) Intentionally Omitted; (c) Intentionally Omitted; (d) Intentionally Omitted; or (e) any other O&M Contractor-Related Entity whose work is not completed at the date of the relevant Exclusion and that remains an O&M Contractor-Related Entity 75 Calendar Days after the date of the relevant Exclusion. <p>(11) Intentionally Omitted</p> <p>(12) the O&M Contractor makes or permits a transfer or assignment in breach of Part 2, <u>Section 39.1</u>.</p> <p>(13) the O&M Contractor fails to procure or maintain any Contractor Bond required to be procured and maintained pursuant to Part 2, <u>Sections 9.3.1</u> and <u>9.3.2</u> (other than due to the provider of any such bond ceasing to qualify as an Eligible Surety).</p> <p>(14) the O&M Contractor fails to obtain and maintain, or cause to be obtained and maintained, any O&M Insurance Policy in full compliance with, and as and when required under, this Agreement (other than any non-material deviation from the requirements of this Agreement pertaining to the amounts or terms of such O&M Insurance Policy) and such failure continues for 10 Calendar Days.</p> <p>(15) The O&M Contractor’s aggregate liabilities due to the Developer under this Agreement exceed the Initial O&M Liability Cap set forth in Part 1, Article 10.1, or the O&M Contractor so asserts in writing.</p> <p>(16) The Lenders’ O&M Direct Agreement or the Enterprises’ O&M Direct Agreement becomes invalid, void or unenforceable with respect to the O&M Contractor.</p> <p>(17) The O&M Contractor breaches its obligations under Part 2, <u>Section 53.8.2</u>.</p>	
<p>(18) The O&M Contractor fails to comply with any Safety Compliance Order pursuant to Part 2, <u>Section 23.1.3</u> and such failure directly results in a material and ongoing risk to:</p> <ul style="list-style-type: none"> (a) the health or safety of any person; (b) the Environment; (c) Improvements; (d) the community; or (e) property. <p>(19) Intentionally Omitted.</p> <p>(20) The O&M Contractor fails to perform its obligations under Part 2,</p>	<p>10 Calendar Days after the date on which the Developer delivers notice to the O&M Contractor of the occurrence of the relevant O&M Contractor Default.</p>

<u>O&M Contractor Default</u>	<u>Cure Period</u>
<p><u>Section 6.</u></p> <p>(21) The O&M Contractor fails to procure a replacement Contractor Bond pursuant to Part 2, <u>Sections 9.3.1</u> and <u>9.3.2</u> within 10 Calendar Days after the provider of any such Contractor Bond ceases to qualify as an Eligible Surety or an Eligible Financial Institution.</p>	
<p>(22) A breach of Federal Law or any requirement that in either case, pursuant to the express terms of <u>Schedule 15 (Federal and State Requirements)</u>, gives rise to a default (excluding, for certainty, a default pursuant to <u>Section 5.4 of Schedule 15 (Federal and State Requirements)</u>) that may substantially result in termination of this Agreement by the Developer.</p> <p>(23) The O&M Contractor fails to make any payment to the Developer pursuant to or in relation to this Agreement when due (unless such payment is the subject of a good faith Dispute).</p> <p>(24) An Abandonment occurs or the O&M Contractor abandons the Project.</p> <p>(25) Any O&M Contractor-Related Entity (other than O&M Contractor):</p> <ul style="list-style-type: none"> (a) not acting in concert with the O&M Contractor; or (b) acting independently of the O&M Contractor to the extent that an O&M Contractor Default number (9) in this Part 2, <u>Section 32.1.1</u> does not apply; <p>commits a Prohibited Act and:</p> <ul style="list-style-type: none"> (i) Intentionally Omitted; (ii) Intentionally Omitted; (iii) Intentionally Omitted; or (iv) remains an O&M Contractor-Related Entity 20 Calendar Days after the occurrence of the relevant Prohibited Act. 	<p>20 Calendar Days after the date on which the Developer delivers notice to the O&M Contractor of the occurrence of the relevant O&M Contractor Default.</p>
<p>(26) An Organizational Conflict of Interest was known, or should have been known, and was not disclosed to the Developer pursuant to the ITP before the Agreement Date.</p> <p>(27) The O&M Contractor fails to comply with any Governmental Approval, Permit or Law, or any Environmental Requirement, in any such case in any material respect.</p> <p>(28) The O&M Contractor fails to comply with any requirement of this Agreement pertaining to the amounts, terms, coverage documentation or evidencing of any O&M Insurance Policy, other than:</p> <ul style="list-style-type: none"> (a) with respect to any failure to submit documents verifying insurance coverage and payment of insurance premiums and renewals that constitutes an O&M Noncompliance Event; or (b) with respect to any failure that results in a Developer 	<p>20 Calendar Days (subject to extension in accordance with Part 2, <u>Section 32.1.2.a</u>) after the date on which the Developer delivers notice to the O&M Contractor of the occurrence of the relevant O&M Contractor Default.</p>

O&M Contractor Default	Cure Period
Default number (14) in this Part 2, <u>Section 32.1.1</u> .	
(29) Intentionally Omitted.	30 Calendar Days
(30) Subject to Part 2, <u>Section 5.4</u> , any representation or warranty in this Agreement made by the O&M Contractor pursuant to this Agreement, or in any certificate, schedule, report, instrument, agreement or other document delivered by or on behalf of the O&M Contractor to the Developer pursuant to this Agreement, is false, misleading or inaccurate in any material respect when made or omits material information when made.	(subject to extension in accordance with Part 2, <u>Section 32.1.2.a</u>)
(31) A violation by the O&M Contractor of Part 2, <u>Section 53.5</u> .	after the date on which the Developer delivers notice to the O&M Contractor of the occurrence of the relevant O&M Contractor Default.
(32) A breach by the O&M Contractor of any of its material obligations under this Agreement or the Interface Agreement, including any written repudiation of this Agreement, other than any breach that: (a) constitutes an O&M Contractor Default under any other paragraph of this Part 2, <u>Section 32.1.1</u> ; (b) constitutes an O&M Noncompliance Event; (c) results in the accrual of an Operating Period Closure Deduction; or (d) arises due to a Relief Event or Compensation Event.	

32.1.2. For purposes of determining when any applicable O&M Contractor Default Cure Period has expired or when a cure of any relevant O&M Contractor Default has been effected, the following provisions of this Part 2, Section 32.1.2 shall apply:

- a. with respect to any O&M Contractor Default number (26), (27), (28), (30), (31) or (32) in Part 2, Section 32.1.1 that requires a longer period to cure than the applicable O&M Contractor Default Cure Period, if the O&M Contractor has within 5 Calendar Days of the start of the relevant O&M Contractor Default Cure Period submitted a rectification plan to the Developer for Acceptance, then such O&M Contractor Default Cure Period shall be extended so that it expires on the earliest of:
 - i. the later of the date on which the Developer rejects such plan and the end of the O&M Contractor Default Cure Period absent any extension;
 - ii. the latest date reasonably necessary to effect the cure thereof as set out in the Accepted plan;
 - iii. if there is an Accepted plan, 90 Calendar Days after the date of the start of the applicable O&M Contractor Default Cure Period; or
 - iv. the date on which the O&M Contractor ceases its good faith efforts to cure such O&M Contractor Default in accordance with the Accepted plan;
- b. without prejudice to Part 2, Section 32.1.2.a, with respect to the O&M Contractor Default number (30) in Part 2, Section 32.1.1, the cure will be complete when all necessary disclosures have been made and all adverse effects (if any) caused by the incorrect disclosure have been cured;
- c. with respect to any O&M Contractor Default number (9), (10), (25) or (26) in Part 2, Section 32.1.1, the cure must be Accepted by the Enterprises;

- d. with respect to the O&M Contractor Default number (14), (21) or (28) in Part 2, Section 32.1.1, the Developer shall have the right, but not the obligation, to effect a cure, at the O&M Contractor's expense, if such an O&M Contractor Default continues after the end of the applicable O&M Contractor Default Cure Period; and
- e. any requirement of prior notice of O&M Contractor Default from the Developer to the O&M Contractor to initiate the applicable O&M Contractor Default Cure Period shall be automatically waived if:
 - i. the O&M Contractor knew that the relevant O&M Contractor Default had occurred;
 - ii. the O&M Contractor failed to notify the Developer of the relevant O&M Contractor Default;
 - iii. the O&M Contractor knew (or reasonably should have anticipated) that as a result of such failure the Developer would not know of such O&M Contractor Default; and
 - iv. at the relevant time, the Developer did not know of the relevant O&M Contractor Default,

in which case the applicable O&M Contractor Default Cure Period shall start on the date that the O&M Contractor first knew that the relevant O&M Contractor Default had occurred.

32.2. Developer Remedies for O&M Contractor Default

- 32.2.1. If any O&M Contractor Default occurs and has not been cured by the expiry of the applicable O&M Contractor Default Cure Period, the Developer may in its discretion, subject to the Lenders' rights pursuant to the Lenders' O&M Direct Agreement, exercise any rights and remedies available to them (under this Agreement, at Law or otherwise) for so long as such O&M Contractor Default continues uncured, including:
 - a. terminating this Agreement pursuant to Part 2, Section 33.1.3;
 - b. exercising their rights of self-help pursuant to Part 2, Sections 23.4.2 to 23.4.4 as provided in Part 2, Section 23.4.1.b;
 - c. by notice to the O&M Contractor, granting the O&M Contractor an extended O&M Contractor Default Cure Period (in addition to any other extension pursuant to Part 2, Section 32.1.2.a) which grant may be made subject to such conditions as the Developer may require in its discretion;
 - d. making a demand upon and enforcing any Contractor Bond in accordance with its terms, with the proceeds of any such action to be applied to the satisfaction of the O&M Contractor's obligations under this Agreement, including payment of amounts due to the Developer; and/or
 - e. waiving such default in accordance with Part 2, Section 43.3.
- 32.2.2. The Developer's rights and remedies with respect to the occurrence of any O&M Contractor Default are without limitation to its rights and remedies with respect to the occurrence of any other O&M Contractor Default.

32.3. Developer Defaults and Cure Periods

32.3.1. The occurrence of any one of the events set out in the column titled “Developer Default” in the table below shall constitute a “Developer Default”. For purposes of this Agreement, “Developer Default Cure Period” means, in respect of a Developer Default, the cure period specified in the column titled “Cure Period” in the table below in the same row as such Developer Default, subject to extension in accordance with Part 2, Section 32.3.2.

Developer Defaults

<u>Developer Default</u>	<u>Cure Period</u>
(1) Intentionally Omitted.	None.
(2) The Developer fails to make any payment to the O&M Contractor under this Agreement when due (unless such payment is the subject of a good faith Dispute).	30 Calendar Days after the date on which the O&M Contractor delivers notice to the Developer of the occurrence of the relevant Developer Default.
(3) Intentionally Omitted.	Intentionally Omitted.
(4) Intentionally Omitted.	
(5) Intentionally Omitted.	
(6) Intentionally Omitted.	60 Calendar Days after the date on which the O&M Contractor delivers notice to the Developer of the occurrence of the relevant Developer Default.
(7) The Developer makes an assignment or transfer in breach of Part 2, <u>Section 39.2</u> .	
(8) A breach or breaches by the Developer of any of its or their obligations under this Agreement (other than any breach or breaches that constitute a Developer Default under any other paragraph of this Part 2, <u>Section 32.3.1</u>) that (in the case of more than one breach, when taken together) substantially frustrates or renders it impossible for the O&M Contractor to perform all or a substantial part of its obligations or to exercise all or a substantial part of its rights under this Agreement in each case for a continuous period of 60 Calendar Days.	
(9) Subject to Part 2, <u>Section 5.4</u> , any representation or warranty made by the Developer pursuant to Part 2, <u>Section 5.1.2</u> is false, misleading or inaccurate in any material respect when made or omits material information when made.	75 Calendar Days after the date on which the O&M Contractor delivers notice to the Developer of the occurrence of the relevant Developer Default.

32.3.2. For purposes of determining when any applicable Developer Default Cure Period has expired or when a cure of any relevant Developer Default has been effected, the following provisions of this Part 2, Section 32.3.2 shall apply:

- a. with respect to any Developer Default number (9) in Part 2, Section 32.3.1 that, in the Developer’s reasonable determination, requires a longer period to cure than the applicable Developer Default Cure Period, if the Developer has within the relevant

Developer Default Cure Period notified the O&M Contractor of such determination, then, provided that (I) the Developer has taken meaningful steps to cure such Developer Default before triggering such extension and (II) the Developer proceeds diligently to cure such Developer Default after such extension is made, such Developer Default Cure Period shall be extended to the earliest of:

- i. the latest date reasonably necessary to effect the cure; or
 - ii. 130 Calendar Days after the date of the end of the applicable Developer Default Cure Period
- b. with respect to Developer Default number (9) in Part 2, Section 32.3.1, the cure will be complete when all necessary disclosures have been made and all adverse effects (if any) caused by the incorrect disclosure have been cured.

32.4. O&M Contractor Remedies for Developer Default

32.4.1. If any Developer Default occurs and has not been cured within the applicable Developer Default Cure Period, the O&M Contractor may in its discretion, subject to the Lenders' rights pursuant to the Lenders' O&M Direct Agreement:

- a. terminate this Agreement pursuant to Part 2, Section 33.1.4;
- b. by notice to the Developer, grant the Developer an extended Developer Default Cure Period (in addition to any other extension pursuant to Part 2, Section 32.3.2); and/or
- c. waive such default in accordance with Part 2, Section 43.3.

32.4.2. The O&M Contractor's rights and remedies with respect to the occurrence of any Developer Default are without limitation to its rights and remedies with respect to the occurrence of any other Developer Default.

33. TERMINATION

33.1. Termination Events

33.1.1. Exclusive Rights to Terminate

- a. Intentionally Omitted.
- b. This Part 2, Section 33, together with the other provisions of this Agreement expressly referred to in this Part 2, Section 33 and the provisions of the Lenders' O&M Direct Agreement and the Enterprises' O&M Direct Agreement, contain the entire and exclusive provisions and rights of the Developer and the O&M Contractor regarding termination of this Agreement, and any and all other rights to terminate at Law or in equity are hereby waived to the maximum extent permitted by Law, provided that termination of this Agreement shall not relieve the O&M Contractor, or any Guarantor, insurer or any surety or other financial institution that provides a Contractor Bond, of its obligation for any Claims arising prior to termination.

33.1.2. Termination for Termination of the Project Agreement

- a. If the Project Agreement is terminated in accordance with Section 33 thereof, this Agreement shall automatically terminate as of the Project Agreement Termination Date. The Developer shall promptly deliver a Termination Notice to the O&M Contractor upon delivering or receiving any notice effecting a termination of the Project Agreement pursuant to the terms thereof.
- b. Intentionally Omitted.
- c. As a consequence of a Termination pursuant to Part 2, Section 33.1.2.a, the Developer or the O&M Contractor, as applicable, shall pay the Termination Amount to the other Party as determined pursuant to Section 1 of Schedule 7 (*Compensation on Termination*).

- d. Promptly upon (i) receipt by the Developer of the Enterprises' written notice of its election to terminate the Project Agreement or (ii) the Developer's delivery of a written notice of its election to terminate the Project Agreement, the Developer shall provide a copy of such notice to the O&M Contractor. Within 15 Calendar Days of the O&M Contractor's receipt of such notice, the O&M Contractor shall provide the Developer with a written estimate of any amounts it reasonably believes are owed to it pursuant to Schedule 7 (Compensation on Termination), accompanied by all documentation reasonably required to support such estimate and a certification that such amounts are true and correct, and any other information that the Developer may reasonably request in respect thereof (such written estimate, the "O&M Termination Compensation Estimate").

33.1.3. Termination for O&M Contractor Default

- a. If a O&M Contractor Default occurs and has not been cured within the applicable O&M Contractor Default Cure Period, the Developer may, in its discretion and subject to prior notice in accordance with Part 2, Section 33.1.3.b, terminate this Agreement at any time that such default is continuing by delivering to the O&M Contractor a Termination Notice to such effect.
- b. Any such termination for O&M Contractor Default shall be effective 30 Calendar Days from the date of the Termination Notice, or on such later date as the Developer may specify in such notice.
- c. As a consequence of any termination for O&M Contractor Default, the O&M Contractor shall pay the Termination Amount to Developer as determined pursuant to Section 2 of Schedule 7 (Compensation on Termination).

33.1.4. Termination for Developer Default

- a. If a Developer Default occurs and has not been cured within the applicable Developer Default Cure Period, the O&M Contractor may, in its discretion and subject to prior notice in accordance with Part 2, Section 33.1.4.b, terminate this Agreement at any time that such default is continuing by delivering to the Developer a Termination Notice to such effect.
- b. Any such termination for Developer Default shall be effective 30 Calendar Days from the date of the Termination Notice.
- c. As a consequence of any termination for Developer Default, the Developer shall be obligated to pay the Termination Amount to the O&M Contractor as determined pursuant to Section 3 of Schedule 7 (Compensation on Termination).

33.1.5. Intentionally Omitted.

33.1.6. Intentionally Omitted.

33.1.7. Intentionally Omitted.

33.2. Consequences of Termination

On the O&M Termination Date as determined pursuant to Part 2, Sections 33.1.2 through 33.1.4, this Agreement shall automatically terminate.

33.3. No Increased Termination Liabilities

- a. Notwithstanding any other provision of this Agreement, but subject to Part 2, Section 33.3.b, no otherwise effective amendment or waiver of any provision of, or exercise of any right under any Subcontract to which the O&M Contractor is a party shall, as between the Developer and the O&M Contractor, have the effect of increasing the amount of the Developer's termination liabilities as of the O&M Termination Date as reflected in any Termination Amount.

- b. Part 2, Section 33.3.a shall not apply with respect to any such amendment, waiver, exercise of any right:
 - i. to the extent such constitutes an amendment or waiver of any provision of any Subcontract to which the O&M Contractor is a party, to the extent necessary to reflect a corresponding amendment to, or Change under, this Agreement;
 - ii. if, after giving effect to the implementation thereof, such amendment, waiver, exercise of any right would not increase the projected (in the case of amounts that may be determined in accordance with the Financial Model) or reasonably estimated maximum amount of the Developer's liabilities to the O&M Contractor as of the O&M Termination Date relative to the projected or reasonably estimated, as applicable, maximum amount of such liabilities without giving effect to the implementation thereof; or
 - iii. if the O&M Contractor has obtained the Developer's prior written consent to the same resulting in a potential increase in the Developer's liabilities to the O&M Contractor of the kind referenced in Part 2, Section 33.3.b.ii, which consent shall:
 - A. reference this Part 2, Section 33.3.b.iii; and
 - B. be subject to the Developer's Acceptance, Approval, consent, approval or like assent as otherwise provided for in this Agreement with respect to the relevant amendment, waiver, exercise of any right, or otherwise (if not so provided) subject to the Developer's Approval.

33.4. Exclusivity of Remedy

Any Termination Amount irrevocably paid by the Developer or the O&M Contractor to the other Party shall be in full and final settlement of the Developer's or the O&M Contractor's, as applicable, rights and claims against the other Party for, or in connection with, breaches and/or termination of this Agreement whether under contract, tort, restitution or otherwise, but without prejudice to:

- a. any antecedent liability of the Developer to the O&M Contractor or of the O&M Contractor to the Developer, as the case may be, that arose prior to the O&M Termination Date (but not from the termination itself) to the extent such liability has not already been taken into account in the determination of the Termination Amount (which amount, for certainty, shall in all cases be deemed to take into account any otherwise earned or payable O&M Fee that remains unpaid on the O&M Termination Date);
- b. any liabilities arising in respect of any breach by the Developer or the O&M Contractor after the O&M Termination Date of any obligation under this Agreement that survives the O&M Termination Date, to the extent such liability has not already been taken into account in the determination of any Termination Amount; and
- c. the Parties' respective rights, remedies, obligations or liabilities under or in connection with the Interface Agreement, the Enterprises' O&M Direct Agreement, the Lenders' O&M Direct Agreement, or recourse to the Contractor Bonds.

34. HANDOVER PREPARATIONS AND ACTIVITIES

34.1. Preparations for Handover

34.1.1. During:

- a. the final 100 Calendar Days prior to the O&M Termination Date; or
- b. the period after the service of any Termination Notice,

as applicable, and in either case for a period of time thereafter as reasonably required by the Developer, the O&M Contractor shall, without limiting its other obligations under this Agreement, use Reasonable Efforts to cooperate and coordinate with the transfer with effect from the O&M

Termination Date of responsibility for the O&M Activities to the Developer and/or any Person designated by the Developer.

34.1.2. For purposes of Part 2, Section 34.1.1, the O&M Contractor's obligations to cooperate and coordinate shall include:

- a. cooperating with the Developer and/or any Person designated by it, and providing reasonable assistance and advice concerning the O&M Activities and its transfer to the Developer and/or to such Person;
- b. promptly providing to the Developer and/or its designees with:
 - i. Site access pursuant to Part 2, Section 21.1.1; and
 - ii. pursuant to Part 2, Section 19.1, access to and, on request pursuant to Part 2, Section 19.1.3.c, copies of, all Project Records including all:
 - A. information on the identity, terms and conditions of employment of all employees of the O&M Contractor employed in the provision of the O&M Activities at such time or, with respect to any early termination of this Agreement, immediately prior to the service of any Termination Notice;
 - B. manuals;
 - C. equipment logs;
 - D. drawings;
 - E. files; and
 - F. specifications,

as reasonably required for the efficient transfer of responsibility of performance of the Project, and the O&M Contractor shall warrant that, to the best of its knowledge and belief, the information contained in such Project Records is accurate in all material respects;

- c. using Reasonable Efforts to complete all reasonably necessary preliminary acts (including entering into any contracts) to ensure its ability to comply with its obligations under Part 2, Section 34.2.1 on and from the O&M Termination Date; and
- d. complying with Part 2, Section 12.1 where, for such purposes, an Other Department Project shall be deemed to prospectively include the Project following the future occurrence of the O&M Termination Date.

34.1.3. Intentionally Omitted.

34.2. Assignments and Transfers

34.2.1. Without limiting its other obligations under this Agreement, on the O&M Termination Date, and subject to the Lenders' O&M Direct Agreement, the O&M Contractor shall, unless the Developer elects in writing to the contrary, assign and transfer to the Developer, and/or any Person designated by the Developer, for no additional payment:

- a. the benefit of any and all direct contractual arrangements (as may be reasonably required by the Developer) that the O&M Contractor may have with any third parties in relation to the Project, provided that to the extent any such assignment and transfer shall be made to the Enterprises, such assignment and transfer shall be made subject to such terms and conditions as required by State Law to obtain the consent of the Colorado State Controller;
- b. to the extent not effected pursuant to any assignment and transfer made pursuant to Part 2, Section 34.2.1.a, all Governmental Approvals and Permits; and

- c. to the extent not effected pursuant to any assignment and transfer made pursuant to Part 2, Section 34.2.1.a, its rights, title and interest in and to:
 - i. the Transferrable Assets;
 - ii. warranties associated with the Transferrable Assets and any Warranted Elements (including those referenced in Part 2, Section 9.4.5); and
 - iii. all Project Intellectual Property (excluding any Proprietary Intellectual Property, which shall remain subject to the license granted pursuant to Part 2, Section 52.1);
in the case of software (which, for certainty, shall remain subject to the license granted pursuant to Part 2, Section 52.1.1.) together with:
 - iv. administrator access to each proprietary system software package and workstation, so that the Developer can maintain the software system and create users as required for the use of each software package; and
 - v. an agreement for the use of any proprietary software product that is not commercial off-the-shelf software for a period of five years from the O&M Termination Date;

provided that if, for any reason, the O&M Contractor cannot assign and transfer its interest in any of the foregoing, it shall declare a trust of all its beneficial interest in the same for the benefit of the Developer and/or its designee, or use Reasonable Efforts to make equivalent arrangements (including with respect to Transferrable Assets not owned by the O&M Contractor through a license to use the same as necessary in connection with the Project) to provide the Developer with equivalent rights and protections. The O&M Contractor hereby irrevocably and unconditionally appoints the Developer as the O&M Contractor's lawful attorney (and to the complete exclusion of any rights that the O&M Contractor may have in such regard) for the purpose of generally executing or approving such deeds or documents and doing any such acts or things necessary to give effect to the provisions of this Part 2, Section 34.2.1 as the Enterprises may in their discretion think fit.

34.2.2. The O&M Contractor shall promptly after, and in any event no later than 15 Working Days after the O&M Termination Date hand over to the Developer all Project Records and other Work Product owned by the Developer pursuant to Part 2, Section 7.3.3.b (or complete and accurate copies to the extent originals are not required by the Developer) by whatever means the Developer reasonably requires that are in the possession, custody or power of the O&M Contractor and other O&M Contractor-Related Entities.

34.3. No Contrary Activities

The O&M Contractor shall not take any action (or refrain from taking any action) in a manner that is calculated or intended to directly or indirectly prejudice or frustrate any of the activities contemplated under Part 2, Section 34.1 or any transfer or assignment contemplated under Part 2, Section 34.

PART L: LIMITATIONS ON LIABILITY

35. REMEDIES AND LIABILITY

35.1. O&M Contractor's Sole Remedies

Subject to Part 2, Section 35.2, the O&M Contractor's sole remedy in relation to matters for which an express right or remedy is stated in this Agreement, including as the result of the occurrence of any Supervening Event, shall be that right or remedy and the O&M Contractor shall have no additional right or remedy however arising.

35.2. No Double Recovery

Notwithstanding any other provision of this Agreement, no Party shall be entitled to recover compensation under this Agreement or any other agreement in relation to the Project in respect of any Loss that it has incurred to the extent that it has already been compensated in respect of that Loss pursuant to this Agreement or otherwise.

35.3. Developer's Sole Remedy for Certain O&M Contractor Failures to Perform Work

Without prejudice to:

- a. any other express right of the Developer pursuant to this Agreement (other than the right of a Principal Indemnified Party to be indemnified pursuant to Part 2, Section 24.2 from and against Claims asserted against it and/or Losses suffered by it, except for its right to be indemnified in respect of Claims and/or Losses referred to in Part 2, Sections 35.3.c and 35.3.d); and
- b. the Developer's right to claim, on or after termination of this Agreement, the amount of its reasonable Losses suffered as a result of, or incurred by it as a result of rectifying or mitigating the effects of, any breach of this Agreement by the O&M Contractor or the occurrence of any O&M Contractor Default, save to the extent that the same has already been recovered by the Developer pursuant to this Agreement or has been taken into account in the calculation of any Termination Amount,

the sole remedy of the Developer in respect of any O&M Noncompliance Event, Non-Permitted Closure or any failure by the O&M Contractor specified in any of Sections 1.3.2.a, 1.3.2.b or 1.3.2.c of Schedule 15 (*Federal and State Requirements*) shall be the operation of Schedule 6 (*Performance Mechanism*), provided that such limitation shall not apply in respect of:

- c. Claims asserted against a Principal Indemnified Party by any other Person (including, for certainty, an Indemnified Party who is not a Principal Indemnified Party) and/or Losses suffered by a Principal Indemnified Party as a result of any such Claim; or
- d. Losses suffered by a Principal Indemnified Party as a result of any of the events or circumstances referred to in Part 2, Sections 24.2.b, 24.2.d or 24.2.g (other than, in the case of any Non-Permitted Closure, loss of use of any travel lane, ramp, cross street, shoulder, sidewalk or driveway).

35.4. Non-financial Remedies

Without prejudice to the other rights and remedies under the express terms of this Agreement, nothing in Part 2, Sections 35.2 and 35.3 shall prevent or restrict the right of the Developer or the O&M Contractor to seek any non-financial remedies from the court pursuant to the Dispute Resolution Procedure.

35.5. Available Insurance

The O&M Contractor shall not be entitled to any payment or credit (or any portion of either thereof) which would have been due, or from which it would have otherwise received a benefit, under this Agreement to the extent that it is (or, with respect to Part 2, Section 35.5.a only, should

be) able to recover the amount or receive the benefit of such payment or credit (or such portion) under, without duplication:

- a. any Insurance Policy (whether or not such insurance has in fact been effected or, if effected, has been vitiated, cancelled or declared void as a result of any act or omission of the O&M Contractor (or any other O&M Contractor-Related Entity), including due to non-disclosure or under-insurance), but excluding any insurance coverage that is unavailable as the result of any breach of this Agreement by the Developer or violation of Law by the Developer;
- b. any other policy of insurance that the O&M Contractor has taken out and maintains; or
- c. any other policy of insurance that the O&M Contractor is entitled to claim under as an additional insured,

paragraphs a., b. and c. together, the “Available Insurance”.

35.6. Waiver of Consequential Damages

- a. Subject to Part 2, Section 35.6.b, neither Party shall be liable to the other for any punitive, indirect, incidental or consequential damages of any nature (including, for certainty, lost toll revenue), whether arising out of a breach of this Agreement, tort (including negligence) or other legal theory of liability.
- b. The limitation set out in Part 2, Section 35.6.a shall not apply to:
 - i. any amounts expressly payable pursuant to this Agreement;
 - ii. any Monthly Performance Deduction the Developer is entitled to make pursuant to Schedule 6 (*Performance Mechanism*);
 - iii. The O&M Contractor’s liability for:
 - A. Claims and/or Losses (including defense costs) to the extent that they are required to have been covered by Available Insurance;
 - B. fines and/or penalties issued by a Governmental Authority arising out of or relating to any O&M Contractor Release of Hazardous Substances; and
 - C. amounts payable by the O&M Contractor under an indemnity pursuant to this Agreement (but only to the extent such indemnity relates to a Claim asserted and/or Losses suffered by any Person other than a Principal Indemnified Party); and
 - D. any Party’s liability for Losses arising out of fraud, willful misconduct, criminal conduct, recklessness, bad faith or gross negligence on the part of the relevant Party (including, with respect to the O&M Contractor, that of any other O&M Contractor-Related Entity, and with respect to the Developer, any Developer-Related Entity).

PART M: CHOICE OF LAW, JURISDICTION AND DISPUTE RESOLUTION

36. CHOICE OF LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado, other than any provision thereof that permits or requires the application of the laws of another jurisdiction, and regardless of any other jurisdiction's choice of law rules. Any provision incorporated herein by reference which purports to negate this or any other Special Provision, in whole or in part, shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this Agreement, to the extent capable of execution.

37. JURISDICTION; WAIVER OF JURY TRIAL

37.1. Jurisdiction

- a. Intentionally Omitted.
- b. Each of the Parties hereby irrevocably submits to the jurisdiction of the United States District Court of Colorado and the State District Court of Colorado for the City and County of Denver with regard to any Dispute and irrevocably waives, to the fullest extent permitted by applicable Law:
 - i. any objection it may have at any time to the laying of venue of any such action or proceeding in such court in accordance with this Part 2, Section 37.1;
 - ii. any claim that any such action or proceeding brought in any such court has been brought in an inconvenient forum; and
 - iii. the right to object, with respect to any such action or proceeding, that such court does not have any jurisdiction over such Party.

37.2. Consent to Service of Process

Each Party irrevocably consents to service of process as provided for in Part 2, Section 49.1.

37.3. Waiver of Jury Trial

EACH PARTY HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT THAT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY PROCEEDING. Each Party hereby:

- a. certifies that no Representative or agent or attorney of any such Person has represented, expressly or otherwise, that any such Person would fail to enforce or would otherwise challenge the foregoing waiver in the event of any suit, action or proceedings relating to this Agreement; and
- b. acknowledges that it has been induced to enter into this Agreement by, among other things, the mutual waivers and certifications in this Part 2, Section 37.

38. DISPUTE RESOLUTION

Except as expressly set out in this Agreement and subject to Part 2, Section 37, any Dispute shall be resolved in accordance with the provisions of Schedule 25 (*Dispute Resolution Procedure*).

PART N: MISCELLANEOUS

39. ASSIGNMENTS AND TRANSFERS

39.1. Assignments and Transfers by the O&M Contractor

Except as contemplated by, and in accordance with, the Enterprises' O&M Direct Agreement or the Lenders' O&M Direct Agreement, the O&M Contractor shall not effect, and shall not permit, any assignment, transfer, mortgage, pledge or encumbrance of any of its interests in the Project, the Site or the O&M Activities, or its interests in, or rights or obligations under this Agreement, the Subcontracts, any Contractor Bond and the Insurance Policies, without the Developer's Approval.

39.2. Assignments and Transfers by the Developer

Subject to Part 2, Section 39.3, except for assignments and transfers made in compliance with Section 34.2.1.a of the Project Agreement, the Developer shall not assign or transfer any of its rights or obligations under this Agreement without the prior written consent of the O&M Contractor except as contemplated by, and in accordance with, the Enterprises' O&M Direct Agreement or the Lenders' O&M Direct Agreement.

39.3. Security

The provisions of Part 2, Section 39.2 shall not apply to the grant of any security interest in connection with any financing extended to the Developer (directly or indirectly) under the Financing Documents or in connection with any Refinancing, or to the enforcement of the same.

40. BINDING EFFECT; SUCCESSORS AND ASSIGNS

This Agreement shall be binding upon and inure to the benefit of the Developer and the O&M Contractor and each of their respective permitted successors and assigns.

41. SURVIVAL

The following provisions of this Agreement shall survive expiration or earlier termination of this Agreement and/or completion of the Work:

- a. each Party's representations and warranties made pursuant to Part 2, Section 5.1 and, pursuant to Schedule 1 (*Financial Close*), subsequently repeated;
- b. all rights with respect to Contractor Bonds;
- c. all Warranties with respect to the Warrantied Elements pursuant to Part 2, Section 9.4;
- d. the indemnifications, limitations and releases set out in Part 2, Sections 24 and 35;
- e. the Dispute Resolution Procedure;
- f. Intentionally Omitted;
- g. the handover provisions set forth in Part 2, Section 34;
- h. all provisions related to the consequences of termination of this Agreement, including Part 2, Sections 33.2, 33.3 and 33.4;
- i. Part 2, Section 52;
- j. Part 2, Section 55;
- k. Section 23.6.1 of Schedule 17 (*Environmental Requirements*);
- l. any provision which obligates the O&M Contractor or the Developer to reimburse the other Party for any cost and expense incurred by them prior to the termination of the Agreement, unless already settled as part of the applicable Termination Amount or otherwise;

- m. any other provisions which, either expressly or by their context, are intended to operate after termination or expiration of this Agreement and/or completion of the O&M Activities; and
- n. any other provisions (including Part 2, Section 15) if and to the extent necessary for the interpretation or application of the foregoing.

42. CONSTRUING THIS AGREEMENT

42.1. Entire Agreement

- 42.1.1. This Agreement constitutes the entire agreement among Developer and the O&M Contractor concerning the subject matter hereof and supersedes all prior negotiations, representations, and agreements, either oral or written, among the Parties with respect to their subject matter.
- 42.1.2. Each of the Parties acknowledges that, except as expressly provided in this Agreement, no Party enters into this Agreement on the basis of, and no Party relies, or has relied, upon, any statement, representation, warranty or other provision (in any case whether oral, written, express or implied) made or agreed to by any Person (whether a Party to this Agreement or not) except those made pursuant to Part 2, Section 5.1, subsequently repeated, where the only remedy or remedies available in respect of any misrepresentation or untrue statement made to it shall be any remedy available under this Agreement), provided that this Part 2, Section 42.1.2 shall not apply to any statement, representation or warranty made fraudulently, recklessly, in bad faith, as a result of gross negligence, willfully or criminally, or to any provisions of this Agreement which were induced by the same, for which the remedies available shall be all those available under the law governing this Agreement.

42.2. Interpretation

- 42.2.1. The language in all parts of this Agreement shall in all cases be construed simply, as a whole and pursuant to its fair meaning and not strictly for or against any Party.
- 42.2.2. Intentionally Omitted.
- 42.2.3. The O&M Contractor further acknowledges and agrees that it has independently reviewed this Agreement and the Project Agreement with legal counsel and other advisors and that the O&M Contractor has, itself or through other arrangements, the requisite experience and sophistication to understand, interpret and agree to this Agreement. Accordingly, in the event of any ambiguity in, or dispute regarding the interpretation of, the provisions of this Agreement, the terms of this Agreement shall not be construed against the Persons that prepared them.

42.3. Severability

- 42.3.1. Notwithstanding Part 2, Section 2.4.1, if any provision (or part of any provision) of this Agreement is ruled invalid (including due to Change in Law) by a court having proper jurisdiction, then the Parties shall:
 - a. promptly meet and negotiate a substitute for such provision or part thereof which shall, to the greatest extent legally permissible, effect the original intent of the Parties; and
 - b. if necessary or desirable, apply to the court which declared such invalidity for an interpretation of the invalidated provision (or part thereof) to guide the negotiations.
- 42.3.2. If any provision (or part of any provision) of this Agreement shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such provision (or part thereof) shall not affect the validity, legality and enforceability of any other provision of (or the other part of such provision) or any other documents referred to in this Agreement, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision (or part thereof) had never been contained herein.

43. AMENDMENTS AND WAIVERS

43.1. Amendments

This Agreement may only be amended by a written amendment duly executed by both Parties, unless the amendment to this Agreement is expressly allowed or required to be made in any other manner pursuant to this Agreement.

43.2. Rights and Remedies Cumulative

Except to the extent otherwise expressly provided in this Agreement, including in Part 2, Sections 33.4 and 35, the rights and remedies of the Developer hereunder are cumulative and are not exclusive of any rights or remedies that the Developer would otherwise have.

43.3. Waivers

Except to the extent otherwise expressly provided in this Agreement:

- a. any waiver of, or consent to depart from, the requirements of any provision of this Agreement shall be approved in the discretion of the Party giving it and shall be effective only if it is in writing by such Party, and only in the specific instance, for the specific time, subject to the specific conditions and for the specific purpose for which it has been given;
- b. no failure on the part of any Party to exercise, and no delay in exercising, any right or power under this Agreement shall operate as a waiver of such right or power; and
- c. no single or partial exercise of any right or power under this Agreement, including any right to give or withhold any consent, approval or Acceptance, nor any abandonment or discontinuance of steps to enforce such a right or power, shall preclude or render unnecessary any other or further exercise of such right or the exercise of any other right.

44. SET-OFF AND DEFAULT INTEREST

44.1.1. The Parties shall each have their respective set-off rights pursuant to Section 5 of Part 3 of Schedule 4 (*Payments*) with respect to their respective payment obligations under this Agreement.

44.1.2. In the event that any of the Parties fails to pay any amount under this Agreement on the due date therefor, interest shall apply and be calculated pursuant to Part 1, Article 12.9.

45. LIMITATION ON THIRD-PARTY BENEFICIARIES

Each Warranty Beneficiary is a third-party beneficiary of (a) the Warranties in relation to its Warrantied Elements and (b) the obligations of the O&M Contractor under Part 2, Sections 9.4.2 to 9.4.4 to the extent that such obligations relate to its Warrantied Elements. It is not otherwise intended by any of the provisions of this Agreement to create any third-party beneficiary rights hereunder, or to authorize anyone not a Party hereto to maintain a suit for personal injury or property damage pursuant to the terms or provisions hereof. Notwithstanding the foregoing, the duties, obligations and responsibilities of the Parties with respect to third parties shall remain as imposed by Law.

46. INDEPENDENT O&M CONTRACTOR

46.1. O&M Contractor as an Independent Project Contractor

The O&M Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither the O&M Contractor nor any agent or employee of the O&M Contractor shall be deemed to be an agent or employee of the Developer. The O&M Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the Developer and the Developer shall not pay for or otherwise provide such coverage for the O&M Contractor or any of its agents or employees. Unemployment insurance benefits will be available to the O&M Contractor and its employees and agents only if such coverage is made available by the O&M Contractor or a third party. The O&M Contractor shall

pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Agreement. The O&M Contractor shall not have authorization, express or implied, to bind the Developer to any agreement, liability or understanding, except as expressly set out herein.

46.2. No Partnership or Similar Relationship

46.2.1. Nothing in this Agreement is intended or shall be construed to create any partnership, joint venture or similar relationship between the O&M Contractor and the Developer.

46.2.2. The Parties do not have or express any intention to form or hold themselves out as a de jure or de facto partnership, joint venture or similar relationship, to share net profits or net losses, or to give the Developer or the O&M Contractor any rights to direct or control the activities of the other or their respective Affiliates, subcontractors or consultants, except as otherwise expressly provided in this Agreement.

46.3. No Relationship with the O&M Contractor's Employees and Subcontractors

46.3.1. In no event shall the relationship between the Developer and the O&M Contractor be construed as creating any relationship whatsoever, including, for certainty, a contractual relationship, between the Developer and:

- a. the O&M Contractor's employees;
- b. any Subcontractor; or
- c. any other Person.

46.3.2. Neither the O&M Contractor nor any of its employees or Subcontractors is or shall be deemed to be an employee of the Developer.

46.3.3. Except to the extent as otherwise expressly provided in this Agreement, the O&M Contractor has sole authority and responsibility to employ, discharge and otherwise control its employees and Subcontractors and has complete and sole responsibility as a principal for its agents, for employees and all Subcontractors and for all other Persons that the O&M Contractor or any Subcontractor hires to perform or assist in performing the O&M Activities.

47. NO PERSONAL LIABILITY

The Developer's authorized representatives, including the Developer's Representative, are acting solely as agents and representatives of the Developer when carrying out the provisions of or exercising the power or authority granted to them under this Agreement, and, as such, none of them shall not be liable either personally or as employees of the Developer for actions in their ordinary course of employment.

48. NO FEDERAL GOVERNMENT OBLIGATIONS

The O&M Contractor acknowledges and agrees that, notwithstanding any concurrence or approval by the United States Federal government in of the solicitation and award of the Project Agreement, the United States Federal government is not a party to the Project Agreement or this Agreement and shall not be subject to any obligations or liabilities to the Enterprises, the Developer, the O&M Contractor or any other Person (whether or not a Party to the Project Agreement or this Agreement) pertaining to any matter resulting from the Project Agreement or this Agreement.

49. NOTICES

49.1. Methods of Notice Submission

49.1.1. Any notice, and any other Approval, Acceptance, consent, approval or like assent, comment, Deliverable, election, demand, direction, designation, request, agreement, instrument, certificate, report or other communication required or permitted to be given or made by a Party under this

Agreement (each, a “notice” or, alternatively, a “Notice”) to another Party must be given in accordance with Part 1, Article 14.

49.1.2. Intentionally Omitted

49.2. Intentionally Omitted

49.3. Changes in Address

The Parties will notify each other in writing of any change of address and/or contract information, such notification to become effective five Working Days after notification.

50. FURTHER ASSURANCES

The O&M Contractor shall promptly execute and deliver to the Developer all such instruments and other documents and assurances as are reasonably requested by the Developer to further evidence the obligations of the O&M Contractor hereunder, including assurances regarding the obligations of Subcontractors referenced herein.

51. COSTS AND EXPENSES OF THE PARTIES

Except as otherwise expressly provided in this Agreement, each Party shall bear its own costs and expenses in connection with the preparation, negotiation, execution and performance of this Agreement and all other related agreements.

52. INTELLECTUAL PROPERTY RIGHTS

52.1. Grant of License, Ownership and Use

52.1.1. The O&M Contractor hereby grants to (or, with respect to any Third Party Intellectual Property, shall provide to or obtain for) the Developer and the Enterprises a non-exclusive, non-transferable (other than to CDOT), irrevocable, fully paid up and sub-licensable license to use the Project Intellectual Property and any Third Party Intellectual Property only:

- a. excluding the Proprietary Intellectual Property and any Third Party Intellectual Property, for the purposes of this Project or any other bridge, highway, street and road or other transportation facility of any mode (and any project related thereto) owned and operated by the Enterprises or any other State Governmental Authority, including any Related Transportation Facility; and
- b. in respect of the Proprietary Intellectual Property and, subject to Part 2, Section 52.1.1.d, any Third Party Intellectual Property:
 - i. to the extent reasonably necessary to effect integration with any Other Department Project; and
 - ii. for the purposes of this Project,

provided that:

- c. the granting of such license and the Developer’s and the Enterprises’ right to exercise their rights thereunder shall not be construed to provide the Developer with greater rights to oversee, direct, manage and engage in the Project and the O&M Activities than they would otherwise have under this Agreement, and the Developer agrees that any use of Project Intellectual Property in violation of the same by themselves or any of their sublicenses shall be at their own risk, cost and expense; and
- d. The O&M Contractor may, to the extent it is reasonably unable to comply with Part 2, Section 52.1.1.b with respect to any Third Party Intellectual Property, comply with its obligations under Part 2, Section 52.1.1.b through functionally equivalent alternative arrangements subject to the consent of the Developer (such consent not to be unreasonably withheld).

52.1.2. Subject to Part 2, Section 52.3, the O&M Contractor shall deliver to the Developer (for delivery to the Department pursuant to Section 52.1.2 of the Project Agreement) copies of all Project

Intellectual Property used in providing the O&M Activities promptly following delivery of written request from the Developer. Subject to the terms of this Agreement, including Part 2, Sections 7.3.3 and 34.2.1.c.iii, Project Intellectual Property shall remain exclusively the property of the O&M Contractor (or, as applicable, another Person), notwithstanding any delivery of copies thereof to the Developer.

52.2. Right to Purchase

The O&M Contractor acknowledges and accepts the right of the Enterprises to purchase from the Developer a license to use the Proprietary Intellectual Property pursuant to Section 52.2 of the Project Agreement. If the Enterprises notifies the Developer that the Enterprises seeks to exercise such purchase right, the O&M Contractor shall consult in good faith with the Developer and the Enterprises in an attempt to come to an agreement as to the terms of such purchase, acting reasonably. If requested by the Developer, the O&M Contractor shall use Reasonable Efforts to procure for the Developer and the Enterprises a right to purchase an equivalent license to use any Third Party Intellectual Property.

52.3. Access to Intellectual Property

The O&M Contractor shall deliver and/or grant access to Project Intellectual Property comprised of software, source code and/or source code documentation directly to the Developer and the Enterprises for purposes of fulfilling the O&M Contractor's obligations under Part 2, Section 52.1, and enabling the Developer and the Enterprises to exercise their rights pursuant to the license granted to them pursuant to Part 2, Section 52.1.1.

53. SPECIAL PROVISIONS

53.1. Intentionally Omitted

53.2. Intentionally Omitted

53.3. Compliance with Law

The O&M Contractor shall strictly comply with all applicable Federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

53.4. Intentionally Omitted

53.5. Software Piracy Prohibition

Funds payable under this Agreement shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. The O&M Contractor hereby certifies and warrants that, during the term of this Agreement and any extensions, the O&M Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of funds payable hereunder. If the Developer determines that O&M Contractor is in violation of this provision, the Developer may exercise any remedy available under this Agreement, including, without limitation, termination of this Agreement pursuant to Part 2, Section 32.2.1.a for O&M Contractor Default number (31) in Part 2, Section 32.1.1, as well as any remedy consistent with Federal copyright laws or applicable licensing restrictions.

53.6. Intentionally Omitted

53.7. Intentionally Omitted

53.8. Public Contracts for Services

53.8.1. The O&M Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Agreement, through participation in the E-Verify Program or the CDOT program

established pursuant to C.R.S. § 8-17.5-102(5)(c), the O&M Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement or enter into a contract with a Subcontractor that fails to certify to the O&M Contractor that the Subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. The O&M Contractor:

- a. shall not use E-Verify Program or CDOT program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed;
- b. shall notify the Subcontractor (if applicable) and the Developer (for notification of the Enterprises) within two Calendar Days if the O&M Contractor has actual knowledge that the O&M Contractor or a Subcontractor is employing or contracting with an illegal alien for work under this Agreement;
- c. shall terminate the subcontract if a Subcontractor does not stop employing or contracting with the illegal alien within two Calendar Days of receiving the notice; and
- d. shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to C.R.S. § 8-17.5-102(5), by the Colorado Department of Labor and Employment.

If the O&M Contractor participates in the CDOT program, the O&M Contractor shall deliver to the Developer (for delivery to the Enterprises) a written, notarized affirmation, affirming that the O&M Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the CDOT program. If the O&M Contractor fails to comply with any requirement of this provision or C.R.S. § 8-17.5-101, *et seq.*, the Developer agency may terminate this Agreement for breach and, if so terminated, the O&M Contractor shall be liable for damages.

- 53.8.2. The O&M Contractor shall stop employing or contracting with an illegal alien for work under this Agreement within two Calendar Days of the giving of any notice pursuant to Part 2, Section 53.8.1.b in relation to an employee of the O&M Contractor or delivery of a notice from the Developer to the O&M Contractor of the Developer's actual knowledge that the O&M Contractor is employing or contracting with an illegal alien for work under this Agreement. Failure of the O&M Contractor to comply with its obligations pursuant to this Part 2, Section 53.8.2 shall be an O&M Contractor Default.

54. COUNTERPARTS

This Agreement (and an amendment or waiver in respect to this Agreement) may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by each of the Parties shall constitute a full and original instrument for all purposes.

55. CONFIDENTIALITY

- 55.1.1. Except as set forth in this Part 2, Section 55, each Party shall hold in confidence for a period ending five (5) years after the O&M Termination Date, any confidential information (marked as such) supplied to it by the other Party or otherwise related to the Project. The O&M Contractor shall inform its Subcontractors, suppliers, vendors and employees of its obligations under this Part 2, Section 55 and shall require each of its Subcontractors, Suppliers, vendors and employees to execute confidentiality arrangements substantially in the form of this Part 2, Section 55. Notwithstanding the foregoing, each Party may disclose the following categories of information or any combination thereof:

- a. information which was in the public domain prior to receipt thereof by such Party or which subsequently becomes part of the public domain by publication or otherwise except by a wrongful act of the other Party or, in the case of the O&M Contractor, any Subcontractor;
- b. information that such Party can show was lawfully in its possession prior to receipt thereof from the other party through no breach of any confidentiality obligation;

- c. information received by such Party from a third party having no obligation of confidentiality with respect thereto;
- d. information at any time developed independently by such Party provided it is not developed from otherwise confidential information;
- e. information disclosed pursuant to and in conformity with the law or a judicial order or in connection with any legal proceedings or arbitration procedures;
- f. information required to be disclosed under securities laws applicable to publicly traded companies and their subsidiaries or reporting required by a Governmental Authority if such Party informs the other Party of the need for such disclosure and, if reasonably requested by the other Party, seeks, through a protective order or other appropriate mechanism, to maintain the confidentiality of such information;
- g. information required to be disclosed pursuant to the Project Agreement (including, without limitation, Section 19 of the Project Agreement and Section 20 of the Project Agreement).

55.1.2. The provisions of this Part 2, Section 55 shall continue in full force and effect in accordance with their terms, and shall survive any termination of this Agreement.

55.1.3. The O&M Contractor shall not issue any press or similar media release or any advertisement, or publish, release or disclose any photograph or other information concerning this Agreement or the Project without the express prior written consent of Developer, which consent shall not be unreasonably withheld. The O&M Contractor shall include this restriction in all Subcontracts and purchase orders. The O&M Contractor shall give prior notice to Developer of any information contained in documents filed with public authorities or any other public disclosure which would result in the dissemination of confidential information. The Developer when marketing the Project may use the O&M Contractor's name and logo. The Developer shall provide the O&M Contractor a copy for review and comment where any press release or any paid advertisement containing the name or logo of the O&M Contractor, or any of the O&M Contractor's parent entities, and may require the O&M Contractor to make a responding press release.

56. TIME OF THE ESSENCE

Without prejudice to any provision of this Agreement relating to liquidated damages, delay or termination for default relating to delay, time is of the essence in the performance of this Agreement.

57. MANDATORY TERMS

57.1. Project Agreement Mandatory Terms

57.1.1. The O&M Contractor acknowledges and agrees:

- a. it has read and reviewed the Project Agreement and understands the obligations relating to the operation and maintenance of the Project set forth therein;
- b. that:
 - i. the Colorado General Mechanics' Lien Statute, C.R.S. §§ 38-22-101, *et seq.*, is not available to it as a remedy for non-payment with respect to the Project and, as such, the O&M Contractor shall not file or permit to be filed any mechanics' lien, materialmen's lien, or other lien against the Enterprises or CDOT, or the Project, in the records of the Clerk and Recorder of the City of Denver or in any other real property records;
 - ii. notwithstanding Part 2, Section 57.1.1.b.i, the Colorado Contractor's Bond and Lien on Funds Statute, C.R.S. §§ 38-26-101, *et seq.*, provides remedies to public authorities and subcontractors in the event of a non-payment of a subcontractor (which remedies are in the form of deductions by the public authority from payments to the contractor and liens by subcontractors against relevant payment

bonds) and, therefore, pursuant to C.R.S. §§ 38-26-107 and, as contemplated by Section 5 of Schedule 5 (Milestone Payments) of the Project Agreement, if the O&M Contractor has an unpaid claim under this Agreement, the O&M Contractor may file a verified statement of the amount due and unpaid with the Enterprises at any time up to and including, but not after, the Substantial Completion Date (following which filing the Enterprises shall be entitled to withhold funds from Developer pursuant to Section 5(a)(i) of Part 3 of Schedule 4 (Payments) of the Project Agreement as a result of such claim); and

- iii. the O&M Contractor shall execute and deliver any lien waiver as and when required to be executed by it pursuant to Sections 2.4(b)(ii) or 2.4(b)(iii) of Part 2 of Schedule 4 (Payments) of the Project Agreement or Sections 4(c)(ii) or 4(c)(iii) of Schedule 5 (Milestone Payments) of the Project Agreement;
- c. that:
 - i. all notices, documentation and other information required to be delivered by the Developer to the Enterprises or, as applicable, the Department pursuant to the Project Agreement shall be directly delivered by the Developer and not by the O&M Contractor acting, directly or indirectly, on the Developer's behalf, except to the extent that the Enterprises Approve in advance the direct delivery of such type of notice by the O&M Contractor to the Enterprises or, as applicable, the Department; and
 - ii. the Enterprises (and the Department) may, in their discretion, disregard any notice delivered by the O&M Contractor contrary to Part 2, Section 57.1.1.c.i;
- d. to:
 - i. participate in meetings between the Developer and Enterprises where requested in writing by either the Developer or the Enterprises; and
 - ii. cooperate with any reasonable requests for information or assistance provided to the O&M Contractor through the Dispute Resolution Procedures (as defined in the Project Agreement), except to the extent that such cooperation would require the O&M Contractor to assume any legal liability; and
- e. that any amendment or waiver to this Agreement which would result in a violation by the Developer of Part A of Schedule 16 to the Project Agreement shall be null and void unless Approved by the Enterprises.

57.1.2. In accordance with Appendix E of Schedule 15 to the Project Agreement, the O&M Contractor hereby agrees that:

- a. The O&M Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The O&M Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The O&M Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause;
- b. The O&M Contractor will, in all solicitations or advancements for employees placed by or on behalf of the O&M Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin;

- c. The O&M Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the O&M Contractor's legal duty to furnish information;
- d. The O&M Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of O&M Contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment;
- e. The O&M Contractor will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor;
- f. The O&M Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders;
- g. In the event of the O&M Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the O&M Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law;
- h. The O&M Contractor will include the provisions of Sections 1 to 8 of Appendix E to Schedule 15 in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The O&M Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the O&M Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the O&M Contractor may request the United States to enter into such litigation to protect the interests of the United States.

57.2. Lender Requirements

- 57.2.1. Within three Working Days after the O&M Contractor learns of their occurrence, the O&M Contractor shall give the Developer written notice of (x) any of the following events, setting forth details of such event, or (y) receipt of any of the following notices, as applicable:
 - a. any change in the direct equity ownership of the O&M Contractor;
 - b. any material notice of violation under any Environmental Law related to the Project or any material modifications to the NEPA determination for the Project;

- c. any insurance claims made by the O&M Contractor in respect of the Project in excess of \$1,000,000;
- d. any Developer Default or material breach by any Party hereunder or any material breach, default or event of default under any other O&M Project Document;
- e. any Supervening Event, to the extent not previously communicated pursuant to Part 2, Section 15; and
- f. (i) the number of O&M Noncompliance Points during any rolling twelve (12) month or thirty-six (36) month period exceeds 60% of the relevant threshold level for a Noncompliance Default Event; (ii) the amount of Operating Period Closure Deductions during any one (1) month period exceeds 60% of the relevant threshold level for a Closure Default Event; (iii) the amount of Operating Period Closure Deductions during any rolling four (4) month period exceeds 60% of the relevant threshold level for a Closure Default Event; or (iv) the amount of Operating Period Closure Deductions during any rolling twelve (12) month period exceeds 60% of the relevant threshold level for a Closure Default Event.

57.2.2. The O&M Contractor shall provide the Developer with any further information reasonably requested by the Developer from time to time concerning the matters described in Part 2, Section 57.2.1.

57.2.3. Pursuant to 46 C.F.R. Part 381, the O&M Contractor hereby agrees as follows and shall insert the following clauses in contracts entered into by the O&M Contractor pursuant to which equipment, materials or commodities may be transported by ocean vessel in carrying out the O&M Work After Construction:

- a. At least fifty percent (50%) of any equipment, materials or commodities procured, contracted for or otherwise obtained with O&M Fees, and which may be transported by ocean vessel, shall be transported on privately owned United States-flag commercial vehicles, if available.
- b. Within ten (10) days following the date of loading for shipments originating within the United States or within twenty (20) Business Days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (i) above shall be furnished to the Developer.

57.2.4. The O&M Contractor shall deliver to the Developer the documentation described below:

- a. Within three Working Days of learning of their occurrence, written notice that:
 - i. the number of O&M Noncompliance Points during any rolling twelve (12) month or thirty-six (36) month period exceeds 70% of the relevant threshold level for a Noncompliance Default Event;
 - ii. the amount of Operating Period Closure Deductions during any one (1) month period exceeds 70% of the relevant threshold level for a Closure Default Event;
 - iii. the amount of Operating Period Closure Deductions during any rolling four (4) month period exceeds 70% of the relevant threshold level for a Closure Default Event; or
 - iv. the amount of Operating Period Closure Deductions during any rolling twelve (12) month period exceeds 70% of the relevant threshold level for a Closure Default Event;
- b. not later than forty-five (45) Calendar Days after the end of each financial quarter, an operating report showing the operating data for the Project for the previous financial quarter; and

- c. not later than seventy-five (75) Calendar Days after the end of each year, an operating report showing the operating data for the Project for the previous year.

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Central 70 Project: Maintenance Contract – Part 2

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first set forth above.

KIEWIT MERIDIAM PARTNERS LLC

By:



John Dionisio
Authorized Person

ROY JORGENSEN ASSOCIATES, INC.

By:

Charles E. Henningsgaard
Senior Vice President

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first set forth above.

KIEWIT MERIDIAM PARTNERS LLC

By: _____

John Dionisio
Authorized Person

ROY JORGENSEN ASSOCIATES, INC.

By: _____


Charles E. Henningsgaard
Senior Vice President

ANNEX A: DEFINITIONS AND ABBREVIATIONS

Part A: Definitions

Except as otherwise specified herein, or as the context may otherwise require, the following terms have the respective meanings set out below for all purposes of this Agreement:

<u>“Abandonment”</u>	means either: <ol style="list-style-type: none"> a. the O&M Contractor demonstrates through statements, acts or omissions an intent not to perform, or continue to perform, a material part of the O&M Activities; or b. the failure to perform a material part of the O&M Activities for a continuous period of 30 Calendar Days (except to the extent that such failure is substantially consistent with the then current Operations Management Plan or Maintenance Management Plan, as applicable, and does not otherwise constitute a breach of this Agreement), <p>in each case unless such intention or failure is otherwise expressly permitted or excused pursuant to this Agreement, including as a result of the occurrence of any Compensation Event or Relief Event.</p>
<u>“Acceptance”</u>	has the meaning given to it in Part 2, <u>Section 2.2.3.a</u> and <u>“Accept”</u> , <u>“Acceptable”</u> and <u>“Accepted”</u> shall be similarly construed.
<u>“Access Permit”</u>	means any Special Permit and any Utility Permit.
<u>“Active Traffic Management”</u>	means real-time management of traffic using ITS and/or Variable Message Signs.
<u>“Actual Benchmarked Insurance Cost”</u>	means, in respect of any Insurance Review Period, the aggregate of the insurance premiums reasonably incurred by the O&M Contractor to maintain the Benchmarked Insurances during such period, excluding any broker’s fees and expenses.
<u>“Ad Valorem and Possessory Interest Tax”</u>	has the meaning given to it in Part 2, <u>Section 30.1.3.a</u> .
<u>“Additional Right-of-Way”</u>	means all Additional ROW Parcels held or acquired in the name of CDOT (or in such other name(s) as the Enterprises may otherwise determine in their discretion) pursuant to Section 7.3.1 of the Project Agreement, but in each case with effect only from the Project License Start Date and only until the Project License End Date, in each case, for the relevant Additional ROW Parcel.
<u>“Additional ROW Parcels”</u>	has the meaning given to it in the Project Agreement.
<u>“Additional Survey Data”</u>	means any survey data other than the Supplied Survey Data.
<u>“Additional Warranties”</u>	has the meaning given to it in the Project Agreement.
<u>“ADR”</u>	shall have the meaning given to it in <u>Section 2(b)</u> of <u>Part A</u> of <u>Schedule 16</u> (<i>Mandatory Terms</i>).
<u>“Affected Party”</u>	has the meaning given to it in the definition of Force Majeure Event in this <u>Part A</u> of <u>Annex A</u> (<i>Definitions and Abbreviations</i>).
<u>“Affiliate”</u>	means, in relation to any Person: <ol style="list-style-type: none"> a. any other Person having Control of that Person;

	<ul style="list-style-type: none"> b. any other Person over whom that Person has Control; and c. any Person over whom any other Person referred to in paragraph <u>a.</u> of this definition also has Control.
<u>“Age”</u>	means the elapsed time since an Element was first constructed or installed or if applicable, last reconstructed, rehabilitated, restored, renewed or replaced.
<u>“Agreed or Determined”</u>	has the meaning given to it in Part 2, <u>Section 2.2.1.</u>
<u>“Agreement”</u>	has the meaning given to it in the Preamble to Part 1 and, for certainty, includes this <u>Annex A</u> (<i>Definitions and Abbreviations</i>) and the Schedules and Attachments thereto.
<u>“Agreement Date”</u>	means the date of this Agreement.
<u>“Annual O&M Report”</u>	has the meaning given to it in <u>Section 13.2</u> of <u>Schedule 11</u> (<i>Operations and Maintenance Requirements</i>).
<u>“Annual Settlement Statement”</u>	has the meaning given in Part 1, Article 12.10.
<u>“Anticipated Substantial Completion Date”</u>	has the meaning given to it in the Interface Agreement.
<u>“Appendix B Parcel”</u>	means any ROW Parcel listed in <u>Appendix B</u> (<i>Known Hazardous Substances Parcels</i>) of <u>Schedule 17</u> (<i>Environmental Requirements</i>).
<u>“Appendix B Parcel Costs”</u>	means the aggregate amount of Excess Costs resulting from the occurrence of all Appendix B Parcel Unexpected Hazardous Substances Events (for certainty, whether or not such events are also Compensation Events), excluding any such event: <ul style="list-style-type: none"> a. that resulted in aggregate Excess Costs equal to or less than \$20,000; and b. to the extent that it arose as a result of any breach of Law, Governmental Approval, Permit or this Agreement, fraud, willful misconduct, criminal conduct, recklessness, bad faith or negligence by or of any O&M Contractor-Related Entity.
<u>“Appendix B Parcel Relief Start Date”</u>	means the Calendar Day on which the aggregate amount of Appendix B Parcel Costs first equals or exceeds \$25,000,000.
<u>“Appendix B Parcel Unexpected Hazardous Substances Event”</u>	the encountering or discovery of collectively all Unexpected Hazardous Substances on, in or under an individual Appendix B Parcel.
<u>“Applicable Tax”</u>	has the meaning given to it in the Project Agreement.
<u>“Approval”</u>	has the meaning given to it in Part 2, <u>Section 2.2.3.b</u> and <u>“Approve”</u> and <u>“Approved”</u> shall be similarly construed.
<u>“Articles of Agreement”</u>	has the meaning given in Part 1, <u>Article 2.1.1.</u>
<u>“As-Built”</u>	means the revised set of drawings, specifications, documents, data and surveys submitted by the Construction Contractor and Accepted by the Developer pursuant to <u>Schedules 8</u> (<i>Project Administration</i>) and <u>10</u> (<i>Design and Construction Requirements</i>) and showing the exact dimensions, geometry, and location of completed Construction Work.
<u>“Asset”</u>	means any physical asset used from time to time by the O&M Contractor or

a Subcontractor to perform its obligations under this Agreement or any Subcontract, including any:

- a. Element;
- b. land or buildings (whether or not part of or on the Site);
- c. plant or machinery;
- d. equipment;
- e. spare parts; and
- f. tools.

“Asset Condition Inspections”

means those inspections required to be conducted pursuant to Section 8 of Schedule 11 (Operations and Maintenance Requirements) to determine the condition of all Elements and to identify structural and non-structural deficiencies which may present a potential safety hazard.

“Authority Having Jurisdiction”

means the Denver Fire Department.

“Automated Vehicle Locator (AVL) System”

means the system described in Section 12 of Schedule 11 (Operations and Maintenance Requirements).

“Automatic License Plate Recognition”

means a camera-based system used to obtain an image of a vehicle’s license plate if a transponder is not detected.

“Automatic Traffic Recorder”

means a system that continuously collects vehicle volume and functional classification data using in-pavement loops and piezoelectric sensors.

“Automatic Vehicle Identification Reader”

means the system that is installed at each tolling point and used to read tag information stored inside each transponder.

“Available Insurance”

has the meaning given to it in Part 2, Section 35.5.

“Average Daily Traffic”

means the average total traffic, in both directions, in one Calendar Day.

“Bare and Wet Pavement”

means when a minimum of 95% of the driving surface (edge line to edge line) including shoulders is free of snow, slush and/or ice.

“Base Benchmarked Insurance Cost”

means, in respect of any Insurance Review Period:

- a. the greater of:
 - i. the Proposal Insurance Cost; and
 - ii. either:
 - A. in respect of the first Insurance Review Period, the Actual Benchmarked Insurance Costs for such period; or
 - B. in respect of any other Insurance Review Period, the amount calculated pursuant to paragraph a.ii.A of this definition, indexed annually in respect of each subsequent Insurance Review Period from each Insurance Renewal Date in respect of which such costs were originally paid to the corresponding Insurance Renewal Date in such subsequent Insurance Review Period,

less

- b. any Base Benchmarked Insurance Deduction in respect of such Insurance Review Period.

“Base Benchmarked Insurance Deduction”

means, in respect of any Uninsurable risk or any Unavailable Term that relates to any Benchmarked Insurance, an amount calculated in respect of an Insurance Review Period that equals:

- a. the amount (if any) by which the Base Benchmarked Insurance Cost would have been a lesser amount had:
- i. such risk been an Uninsurable risk; or
 - ii. such Insurance Term been an Unavailable Term,
- in the case of either i. or ii., as of the dates by reference to which the Base Benchmarked Insurance Cost in respect of such Insurance Review Period is calculated; or
- b. if, in the reasonable opinion of the Insurance Broker that prepares the applicable Joint Insurance Cost Report, it is impossible to determine an amount pursuant to paragraph a. of this definition in respect of any such Uninsurable risk or Unavailable Term, the amount (if any) by which it is reasonable to reduce the Base Benchmarked Insurance Cost under such circumstances, having due regard (to the extent possible) to:
- i. the amount by which the Actual Benchmarked Insurance Cost is less than it would have been as a result of such risk becoming an Uninsurable risk or of such Insurance Term becoming an Unavailable Term; and
 - ii. the amount determined pursuant to paragraph b.i. of this definition as a percentage of the Actual Benchmarked Insurance Cost as calculated immediately prior to such risk becoming an Uninsurable risk or such Insurance Term becoming an Unavailable Term.

“Base O&M Fee”

means the fee due to the O&M Contractor for the performance of O&M Activities, as set forth in the payment schedule provided in Part 2 of Schedule 6 to this Agreement.

“Baseline Asset Condition Inspection Plan”

has the meaning given to it in Section 2.3.2 of Schedule 11 (*Operations and Maintenance Requirements*).

“Baseline Inspections”

has the meaning given to it in Section 2.3.1.a of Schedule 11 (*Operations and Maintenance Requirements*).

“Baseline Substantial Completion Date”

means the Baseline Substantial Completion Target Date, as such date may be extended from time to time pursuant to:

- a. the Project Agreement; or
- b. a Change documented in a Change Order.

“Baseline Substantial Completion Target Date”

means March 4, 2022, as such date shall be modified on a day for day basis to reflect any delay in achieving Financial Close relative to November 30, 2017 (the date assumed in the ITP), as such modification shall be formalized pursuant to the O&M Contract Amendment in accordance with the definition thereof in this Part A of Annex A (*Definitions and Abbreviations*).

<u>“BE”</u>	has the meaning given in Recital A of Part 1.
<u>“Benchmarked Insurance”</u>	means each O&M Insurance Policy.
<u>“Benchmarked Insurance Inception Date”</u>	means the Substantial Completion Date.
<u>“Beneficial Reuse and Materials Management Plan”</u>	means the “Beneficial Reuse and Materials Management Plan” in the form provided in the Reference Documents.
<u>“Best Management Practices”</u>	has the meaning established by applicable Environmental Law governing the particular environmental media or source of Hazardous Substances such practices are intended to address or, in the absence of a particular definition under Environmental Law, shall refer to best practices commonly used to avoid a Release or exacerbation of a Release with respect to the relevant environmental media or source of Hazardous Substances.
<u>“BNSF”</u>	means BNSF Railway Company.
<u>“BNSF Crossing”</u>	means the existing and/or proposed crossing by the BNSF Railroad through the I-70 East corridor on the Right-of-Way as described in <u>Section 10.1.5 of Schedule 10</u> (<i>Design and Construction Requirements</i>) to the Project Agreement.
<u>“BNSF RRA”</u>	means the railroad agreement between CDOT and BNSF dated in relation to the Project, a draft of which Agreement was provided to the O&M Contractor as one of the Reference Documents numbered 29.10.10.03.
<u>“BNSF Work”</u>	means all duties and services to be furnished and provided by BNSF as required by the BNSF RRA.
<u>“Bond Financing”</u>	has the meaning given to it in the Project Agreement.
<u>“Bonds Closing Date”</u>	means the date the Bonds are issued and all conditions specified in Section 13(c) of the TIFIA Loan Agreement have been satisfied or waived in writing by TIFIA.
<u>“Calendar Day”</u>	means a calendar day as determined by reference to the time and date in Denver, Colorado, and <u>“day”</u> means any such calendar day.
<u>“Calendar Year”</u>	means each consecutive period of 12 months commencing on January 1 and ending on December 31 as each such day shall be determined by reference to the time and date in Denver, Colorado.
<u>“Cash Security Account”</u>	has the meaning given in Part 1, Article 11.5.4.
<u>“Category 1 Defect”</u>	means an O&M Defect in an Element or any part of an Element which causes or has the potential to cause any one or more of the following: <ul style="list-style-type: none"> a. an immediate or imminent health or safety hazard, nuisance or other similar immediate or imminent risk to Users or workers (including for example inconveniences such as delays and detours, rough rides, obstacles, slippery conditions, or issues requiring Users to make sudden evasive maneuvers); b. an immediate or imminent risk of structural failure; c. an immediate or imminent risk of damage to a third party's property or equipment; and d. an immediate or imminent risk of damage to the

Environment or any Improvements.

- “Category 2 Defect” means an O&M Defect in an Element or any part of an Element other than a Category 1 Defect.
- “CC Subcontractor” means any Person, other than Developer, who enters into a Subcontract with the Construction Contractor.
- “CCD Identified Future Improvements” means all projects listed in Sections 1.17.1 and 1.17.3 of Section 1 of Schedule 10 (*Design and Construction Requirements*) to the Project Agreement.
- “CDOT” has the meaning given in Recital A of Part 1.
- “CDOT Roadways” means I-270, I-225, Vasquez Boulevard, Colorado Boulevard and Quebec Street, in each case including the ramps up to the intersecting cross-roadway (including directional island and free-flow turn lane where present).
- “CDOT Standard Specifications” has the meaning given to it in Section 1.1 of Appendix A to Schedule 10A (*Applicable Standards and Specifications*) to the Project Agreement.
- “Chairperson” has the meaning given to it in Section 5.c.iii of Schedule 25 (*Dispute Resolution Procedure*).
- “Change” means any change in the O&M Work After Construction relative to what is otherwise permitted or required under this Agreement, including any change or addition to, or replacement of, a Project Standard.
- “Change in Costs” means:
- a. except to the extent paragraphs b. or c. of this definition apply, in respect of:
 - i. any Compensation Event (but, in the case of a Compensation Event falling within paragraph c.ii of the definition thereof in this Part A of Annex A (*Definitions and Abbreviations*), subject to the proviso to the definition of Qualifying Change in Law in this Part A of Annex A (*Definitions and Abbreviations*)); or
 - ii. any O&M Contractor Change documented in a Change Order, but only for purposes of estimating costs pursuant to Sections 2.1 (subject to the proviso to such Section) and 2.2.c of Schedule 24 (*Change Procedure*) and of calculating net savings pursuant to Section 3 of Schedule 24 (*Change Procedure*)),
 the effect of such Compensation Event or O&M Contractor Change (whether such effect is (I) of a one-off or recurring nature and/or (II) positive or negative) on the actual or anticipated losses, charges, liabilities and costs and expenses of the O&M Contractor, including, as relevant and without double counting;
 - iii. any reasonable external professional costs and expenses incurred:
 - A. in complying with the O&M Contractor's obligations under Part 2, Section 15.2.2;

- B. in respect of any such Compensation Event (other than any such event as described in paragraphs d. and e., of the definition thereof in this Part A of Annex A (Definitions and Abbreviations)), in preparing any related Supervening Event Submission (or any update thereof) in compliance with Part 2, Section 15.1; and
 - C. in respect of any Compensation Event as described in paragraphs d. or e. of the definition thereof in this Part A of Annex A (Definitions and Abbreviations), in complying with Sections 1.1.c and 1.2 of Schedule 24 (Change Procedure);
 - iv. any expenditure that is treated as a capital expenditure in accordance with GAAP;
 - v. any operating, maintenance or replacement costs;
 - vi. any employment and labor costs; and
 - vii. with respect to any insurance that the O&M Contractor is required to obtain and maintain, or cause to be obtained and maintained, pursuant to Part 2, Sections 25.1.1 and 25.1.2.c, any change in premiums, premium tax or broker's fees and expenses, including any change therein resulting from:
 - A. a change in the amount of any deductible or in any amount of coverage; and
 - B. any other change in such insurance, including to Insurance Terms; and
 - viii. Intentionally Omitted'
- in all cases for purposes of this paragraph a. of this definition:
- ix. other than with respect to paragraphs a.iii., a.vii. or a.viii. of this definition, as any amounts falling within this definition of Change in Costs are calculated or otherwise taken into account (including through mark-ups) in accordance with Appendix A to Schedule 24 (Change Procedure); and
 - x. excluding:
 - A. any internal costs, fees or expenses of any O&M Contractor-Related Entity except to the extent expressly permitted in accordance with Appendix A to Schedule 24 (Change Procedure); and
 - B. any costs or expenses that are expressly provided to be incidental and excluded pursuant to the terms of Schedule 17 (Environmental Requirements);

- b. subject to Part 2, Sections 15.7.1.d.ii, in respect of any:
 - i. Non-Appendix B Parcel Unexpected Hazardous Substances Event; or
 - ii. Appendix B Parcel Unexpected Hazardous Substances Event,
- Excess Costs; and
- c. in respect of any Unexpected Groundwater Contamination Event, Excess Groundwater Costs.

“Change in Law”

means the coming into effect after the Setting Date of:

- a. the enactment, promulgation or adoption of any Law;
- b. a binding change in the judicial or administrative interpretation of any Law; or
- c. any modification (including repeal) of any Law,

in each case, by a Governmental Authority that:

- d. is materially different from or inconsistent with Law as in effect prior to the coming into effect of the relevant change as referenced in paragraphs a., b. or c. of this definition; and
- e. was not (in the same or substantially similar form and substance to that which later comes into effect) pending, passed or adopted, including in the form of a bill or draft, as of the Setting Date,

provided that Change in Law shall exclude any such enactment, promulgation, adoption, change or modification of any (i) Federal Law (other than any Public Safety Order), (ii) State or local labor Law or (iii) State or local tax Law in each of cases (i), (ii) or (iii) of general applicability.

“Change Order”

means either a PA Change Order or an O&M Change Order.

“Circuit Time for Plowing”

means the total time required to fully service a designated Snow Route calculated from the time the plow vehicle leaves the yard to the time it has completed the plowing operation on the entire plow route.

“Circuit Time for Spreading”

means the total time required to fully service a designated salt or liquid anti-icing/de-icing Snow Route calculated from the time the Spreader vehicle leaves the yard to the time it completes the route.

“City of Denver”

means the City and County of Denver, Colorado.

“Civil Rights Requirements”

has the meaning given to it in Section 1.1.1 of Schedule 15 (*Federal and State Requirements*).

“Claim”

means any claim, demand, action, cause of action, proceeding (legal or administrative), investigation, judgment, demand, suit, dispute or liability.

“Closed Circuit Television”

means cameras used for monitoring travel conditions.

“Closure”

means that all or part of any travel lane, ramp, cross street, shoulder, sidewalk or driveway within the O&M Limits is closed or blocked, or that the use thereof is otherwise restricted, for a period of any duration.

“Closure Deduction”

means, in respect of any Non-Permitted Closure, each continuous period of

Period” 15 minutes commencing from and including:

- a. subject to paragraph b. of this definition, the commencement time of such Non-Permitted Closure; or
- b. in the case of any Closure that is deemed to be a Non-Permitted Closure pursuant to Section 2.11.14.c or 2.11.14.d of Schedule 10 (Design and Construction Requirements) to the Project Agreement, the expiry of the 30 minute period referred to in the relevant Section,

provided that, for certainty, the Closure Deduction Period during which the relevant Closure actually ends (or is deemed to end in accordance with the proviso to the definition of Non-Permitted Construction Closure in this Part A of Annex A (Definitions and Abbreviations)) will have a duration of less than 15 minutes and any reference in Schedule 6 (Performance Mechanism) to a "partial" Closure Deduction Period shall be deemed to refer to such Closure Deduction Period in respect of the relevant Non-Permitted Closure.

“Closure Default Event” means the occurrence of any of the following:

- a. Intentionally Omitted
- b. [REDACTED]

provided that, for certainty, any Operating Period Closure Deduction that is being disputed in good faith by the O&M Contractor shall be disregarded for purposes of determining whether a Closure Default Event has occurred until such time as it has been Agreed or Determined that the relevant deduction was valid.

“Collateral Agent” means U.S. Bank National Association, and its successors and permitted assigns.

“Command Control and Monitoring System” means the integrated overarching system required to monitor, control and implement the various fire, life safety, and other systems located in the Cover.

“Communication” has the meaning given in Part 1, Article 5.5.

“Compensable Construction Period Event” has the meaning given to it in Part 2, Section 15.7.1.

“Compensable Costs” means with respect to a Compensation Event only, any Change in Costs for which the Developer is otherwise obligated to compensate the O&M Contractor in respect of such event as determined pursuant to Part 2, Section 15.3 (for certainty, net of any amount that Developer is (or, pursuant to Part 2, Section 35.5.a, should be) entitled to recover under any Available Insurance).

“Compensation Event” means:

- a. any:
 - i. breach of this the Project Agreement by the Enterprises; or
 - ii. violation of Law by the Enterprises,except to the extent such breach or violation is a Compensation Event under any other paragraph of this definition;
- b. any:
 - i. failure by the Developer to provide the O&M Contractor with Possession of any ROW Parcel by:
 - A. other than with respect to the Existing CDOT Right-of-Way, the applicable date specified in the "Date First Available for Possession" column in the table in Appendix A to Schedule 18 (Right-of-Way);
 - B. with respect to the Existing CDOT Right-of-Way, issuance of NTP2; and
 - C. with respect to the Maintenance Yard, the Snow and Ice Control Commencement Date;
 - ii. failure by the Developer to continuously provide the O&M Contractor with Possession of any ROW Parcel or any Additional ROW Parcel from the applicable Project License Start Date to the applicable Project License End Date;
 - iii. failure by the Developer to comply with its obligation to complete Property Management of certain ROW Parcels pursuant to Sections 2.2.2 and 2.2.3 of Schedule 18 (Right-of-Way); or
 - iv. provision by the Developer to the O&M Contractor of Possession of any ROW Parcel subject to the rights of other Persons, restrictions or qualifications that were not identified, disclosed, expressly anticipated or in existence on or prior to the Setting Date as determined by reference to:
 - A. the terms of the Project Agreement and each Third Party Agreement;
 - B. Law;
 - C. any title commitment in relation to this Project in the possession of or made available to the Preferred Proposer and/or the O&M Contractor-Related Entities;
 - D. the Reference Documents;
 - E. Beneficial Reuse and Materials Management Plan; and
 - F. Public ROW Records;

- c. any:
 - i. Discriminatory Change in Law; or
 - ii. Qualifying Change in Law,
(excluding any resulting Enterprise Change made pursuant to Section 8.6.2 of the Project Agreement);
- d. delivery of a Directive Letter pursuant to Section 1.4.a or Section 1.5.a of Schedule 24 (*Change Procedure*);
- e. an Enterprise Change or a Developer Change documented in a Change Order;
- f. any of the following:
 - i. any Non-Appendix B Parcel Unexpected Hazardous Substances Event;
 - ii. any Appendix B Parcel Unexpected Hazardous Substances Event that occurs during the Operating Period;
 - iii. any Unexpected Groundwater Contamination Event;
 - iv. any Unexpected Utility Condition Event;
 - v. the encountering or discovery of any:
 - A. Unexpected Geological Conditions;
 - B. Unexpected Historically Significant Remains; or
 - C. Unexpected Endangered Species; or
 - vi. any Unexcused Utility Owner Delay; or
- g. any incident of physical damage to an Element of the Project or delay of or disruption to the O&M Work After Construction caused by:
 - i. installation, testing or maintenance of any ETC or ITS Elements by the ETC System Integrator pursuant to the E-470 TSA or the E-470 Installation Agreement;
 - ii. the construction, operation or maintenance of any Other Department Project, or any other facility, infrastructure or project constructed, operated and/or maintained by or on behalf of either Enterprise and/or CDOT, within or in the vicinity of the Right-of-Way, but only to the extent not constructed, operated or maintained by the O&M Contractor (or another Person under common Control with the O&M Contractor) pursuant to this Agreement or otherwise; or
 - iii. the installation by the Enterprises of any advertising on the Right-of-Way or any Additional Right-of-Way;
- h. any breach by the City of Denver of the Denver IGA that results in:
 - i. the assessment of fees or expenses on the O&M

- Contractor that are waived or suspended by the City of Denver under Section 4.A.(i)-(iii) and Exhibit B of the Denver IGA; or
- ii. the City of Denver not accepting the quantum of fill dirt specified in Section 4.D of the Denver IGA, provided that such fill dirt satisfies the requirements specified in the Denver IGA and Reference Document 29.17.11;
- i. any:
 - i. Enterprise Release of Hazardous Substances;
 - ii. Loss by the O&M Contractor as a result of it being held liable as generator under 40 CFR Part 262 or arranger under CERCLA Section 107(a) with respect to any Hazardous Substances for which the O&M Contractor is not identified as the generator and arranger pursuant to Section 23.6.1.a of Schedule 17 (Environmental Requirements) notwithstanding the Parties' agreement pursuant to Section 23.6.1.b of Schedule 17 (Environmental Requirements); or
 - iii. Third Party Release of Hazardous Substances that occurs during the Operating Period;
 - j. Intentionally Omitted;
 - k. the issuance of any Safety Compliance Order, excluding any such order or part thereof that orders or directs Safety Compliance that the O&M Contractor is otherwise obligated to implement pursuant to this Agreement;
 - l. any suspension by the Enterprises pursuant to Part 2, Section 23.3.1 to the extent such suspension constitutes a Compensation Event pursuant to Part 2, Section 23.3.2;
 - m. any Required Action by the Enterprises that is not taken in response to or because of the O&M Contractor's breach of its obligations under this Agreement or any O&M Contractor Default;
 - n. O&M Contractor's obligation to comply with Part 2, Section 12.2.b with respect to any Related Transportation Facility that:
 - i. existed on the Setting Date to the extent the relevant configuration, design and use of such facility was not Known or Knowable on such date; or
 - ii. did not exist on the Setting Date and:
 - A. is not a CCD Identified Future Improvement; or
 - B. is a CCD Identified Future Improvement, but only to the extent the configuration, design and/or use of such improvement was not Known or Knowable on such date,
- in the case of either i. or ii., to the extent such obligation

requires any expenditure that would be treated as a capital expenditure in accordance with GAAP;

- o. any:
 - i. execution of:
 - A. [Reserved.];
 - B. an RRA on terms not materially consistent with the terms set out in the most recent draft of such agreement provided to the O&M Contractor as one of the Reference Documents numbered 29.10.10.03 on or prior to the Final Project Information Date; or
 - C. the Cover Maintenance Agreement on terms not materially consistent with the terms set out in the most recent draft of such agreement provided to the O&M Contractor as Reference Document numbered 29.10.14.10 on or prior to the Final Project Information Date;
 - ii. designation by the Enterprises of a new Third Party Agreement pursuant to Section 8.5.2 of the Project Agreement;
 - iii. material amendment or modification to a Third Party Agreement (other than any Sprint Reimbursement Agreement);
 - iv. 100% Trackwork Plans and Specifications in respect of the UPRR Crossing as referred to in Section 10.1.2.b.i of Schedule 10 (Design and Construction Requirements) to the Project Agreement is approved by UPRR after the Setting Date on terms not materially consistent with the most recent version of such plans and specifications provided as Reference Document 29.10.10.01 on or prior to such date; or
 - v. [Reserved.];
- p. the issuance of any temporary restraining order, preliminary or permanent injunction or other form of interlocutory relief by a court of competent jurisdiction that prohibits the prosecution of a material part of the O&M Work After Construction; and
- q. any failure by the City of Denver:
 - i. to have the EADP (as defined in the Denver IGA) segment from Pond 7A (Brighton West Pond) to the South Platte River operational by June 1, 2018;
 - ii. to have the portion of the EADP not referred to in paragraph q.i. of this definition operational by September 1, 2019;
 - iii. to have the TBDP (as defined in the Denver IGA)

operational by September 1, 2019; or

- iv. to construct the TBDP (including, for certainty, the EADP) materially in accordance with the specifications in the Denver IGA;

in each case unless and to the extent such event arises as a result of any breach of Law, Governmental Approval, Permit or this Agreement, or fraud, willful misconduct, criminal conduct, recklessness, bad faith or negligence by or of any O&M Contractor-Related Entity.

“Construction Contract” means the design and construction contract dated as of the date hereof between the Developer and the Construction Contractor for the design and construction of the Infrastructure, as such contract is amended, supplemented or replaced from time to time in accordance with its terms.

“Construction Contractor” means Kiewit Infrastructure Co.

“Construction Contractor-Related Entities” means:

- a. the Construction Contractor;
- b. the Construction Guarantor;
- c. Subcontractors of the Construction Contractor (of any tier);
- d. any other Persons (except, for certainty, the Developer or the Enterprises) performing any of the Construction Work or the O&M Work During Construction for or on behalf of the Construction Contractor;
- e. any other Persons (except, for certainty, the Developer, the Enterprises and any members of the general public that use or access the Project) for whom the Construction Contractor may be legally or contractually responsible; and
- f. the employees, agents, officers, directors, representatives and consultants of any of the foregoing.

“Construction Guarantor” means Kiewit Infrastructure Group Inc.

“Construction Period” means the period that begins on the earlier to occur of the date of issuance of NTP1 and the Financial Close Date and ends on (and including) the Substantial Completion Date.

“Construction Standards” means:

- a. the standards and specifications listed in Schedule 10A (Applicable Standards and Specifications) to the Project Agreement, including, for certainty:
 - i. the CDOT Standard Specifications; and
 - ii. the Standard Special Provisions;
- b. the Project Special Provisions;
- c. any other standards and specifications expressly referenced in this Agreement as applicable to the Construction Work

(for certainty, excluding any Laws, Governmental Approvals or Permits); and

- d. any other standards and specifications that apply to the Construction Work (excluding, for certainty, any Laws, Governmental Approvals or Permits), including as a result of Developer’s methods of performing the Construction Work,

in each case in the form published or otherwise in effect as of the Final Project Information Date and as modified by the express terms of this Agreement (subject to change, addition or replacement made pursuant to Part 2, Section 8.6).

“Construction Work” means all administrative, design, installation, compliance, permitting, support services, Utility Work, construction related obligations and all other tasks to be performed and provided by Developer required to comply with all requirements set out in Schedule 10 (Design and Construction Requirements) to the Project Agreement and any other provisions of this Agreement applicable to the performance of the Construction Work.

“Consumptive Use” means water that is permanently withdrawn from its source system, as further defined by Law.

“Contract Drawings” means the documents included in Schedule 10B (Contract Drawings) to the Project Agreement.

“Contract Year” means a period of twelve months commencing on (and including) July 1 of each Calendar Year, provided that:

- a. the first Contract Year shall be the period commencing on (and including) the Agreement Date and ending on the immediately following June 30; and
- b. the final Contract Year shall be the period commencing on (and including) July 1 immediately preceding the last Calendar Day of the Term and ending on that last Calendar Day of the Term,

where each of June 30 and July 1 shall be determined by reference to the time and date in Denver, Colorado.

“Contractor Bond” means any:

- a. payment and performance surety bond(s) which bonds shall be:
 - i. provided by and maintained with an Eligible Surety;
 - ii. comprised either of:
 - A. a single payment and performance surety bond substantially in the form set out in Part A of Schedule 20 (Forms of Contractor Bonds) to the Project Agreement; or
 - B. separate payment and performance surety bonds substantially in the forms set out in, respectively, Parts B and C of Schedule 20 (Forms of Contractor Bonds) to the Project Agreement; and
 - iii. in a penal amount of not less than;

- A. Intentionally Omitted;
- B. with respect to any individual bond delivered pursuant to Part 2, Section 9.3.1.a.ii (for purposes of which, each bond delivered in accordance with paragraph a.ii.B. of this definition shall constitute a separate individual bond), 100% of the maximum amount payable by Developer to the O&M Contractor under the O&M Contract in the then current Contract Year (provided that, in the event of any self-performance of the O&M Work by Developer, such maximum amount shall be deemed to equal (or, in the event that Developer is only partially self-performing such Work, such penal amount shall be determined by adding such maximum amount to) Developer’s budgeted amount for such self-performed O&M Work in such Contract Year, as such budgeted amount shall be verified by the Enterprises (acting reasonably)), or, in any case, if greater or with respect to any other part of the O&M Work After Construction, the minimum required by Law, including C.R.S. § 38-26-106; and
 - iv. otherwise provided in compliance with Part 2, Section 9.3.1; or
 - b. any alternative form of payment and/or performance security provided with the Enterprises’ Acceptance pursuant to Part 2, Section 9.3.3.

“Control”

of a Person by another Person means that other Person (whether directly or indirectly):

- a. holds either:
 - i. at least 25% or more of the equity interests in such Person; or
 - ii. a percentage of the equity interests in such Person that is either equal to or greater than the percentage held by any other holder; or
- b. has the right to appoint, approve or remove:
 - i. at least 25% of the board of directors (or equivalent) of such Person; or
 - ii. a percentage of the board of directors (or equivalent) of such Person either equal to or greater than the percentage appointed, approved or removed by any other holder;
- c. exercises control over the direction of the business, management and/or policies of such Person, including through:
 - i. preferred or minority equity holder veto or voting

rights (whether such rights are provided by Law or by such Person's organizational documents or related member or shareholder agreements or similar agreements); or

ii. any other means,

in the case of paragraphs c.i and c.ii to the extent such rights or other means circumvent, or appear intended to circumvent, any restrictions or obligations that would otherwise arise if this definition of Control applied.

<u>"Control Center"</u>	means the control center for controlling the Cover MEP Systems.
<u>"CORA"</u>	means the Colorado Open Records Act.
<u>"CORA Exempt Materials"</u>	means any trade secrets, privileged information and confidential commercial, financial, geological or geophysical data exempt from public disclosure under C.R.S. §§ 24-72-204(3)(a)(IV) or information that is otherwise exempt from disclosure under CORA.
<u>"Core Proposer Team Member"</u>	means each of the following in its capacity as a "Core Proposer Team Member" as defined in the ITP: <ul style="list-style-type: none"> a. Meridiam I-70 East CO, LLC; b. Kiewit Development Company; c. Kiewit C70 Investors, LLC; d. Kiewit Infrastructure Co.; e. Parsons Brinckerhoff; f. Roy Jorgensen Associates, Inc. g. Meridiam Infrastructure North America Fund II; and h. Kiewit Infrastructure Group, Inc.
<u>"Corrective Action"</u>	has the meaning given to it in <u>Section 6.5.8</u> of <u>Schedule 8</u> (<i>Project Administration</i>).
<u>"Corrective Action Plan"</u>	means Developer's plan for taking Corrective Action in respect of systemic Nonconforming Work.
<u>"Courtesy Patrol Service Plan"</u>	means the plan referred to in <u>Section 9.2.2.c</u> of <u>Schedule 11</u> (<i>Operations and Maintenance Requirements</i>).
<u>"Cover"</u>	means the Elements to be constructed by the Construction Contractor within the limits depicted in the I-70 Cover Plans, which (except to the extent otherwise specified in this Agreement) includes both "Planning Area 1" and "Planning Area 2" as depicted in the I-70 Cover Plans.
<u>"Cover Maintenance Agreement"</u>	means the Intergovernmental Agreement among CDOT, HPTE, BE and the City of Denver in relation to the Project, a draft of which Agreement was provided to the O&M Contractor as Reference Document number 29.10.14.10.
<u>"Cover MEP System"</u>	means the mechanical, electrical, and plumbing system and ITS and communications systems identified in <u>Section 12</u> of <u>Schedule 10</u> (<i>Design and Construction Requirements</i>) to the Project Agreement required for the Cover and the Lowered Section between Brighton Blvd. and Dahlia St.

- “Cover O&M Work” means all O&M Work with respect to the Cover in relation to:
- a. the Cover MEP System and associated Elements thereof described in Section 12 of Schedule 10 (*Design and Construction Requirements*) to the Project Agreement;
 - b. fencing and associated support Elements at the east and west limits of the Cover;
 - c. all structural connections or anchors that connect to structures on top of the Cover and are embedded in or connect through the deck slab;
 - d. until the end of the Landscape Warranty period (as described in Section 14.11 of Schedule 10 (*Design and Construction Requirements*) to the Project Agreement), all landscaping, plant, soil and other vegetation and all irrigation systems; and
 - e. all Elements at and below (A) the protection course and root barrier protection at landscape areas and (B) the protection course at vehicular and pedestrian traffic areas (including, for certainty, the Elements referred to in paragraphs h.i to h.iv of the definition of Cover Top O&M Work in this Annex A), including:
 - i. structural Elements, such as deck, girders, bearings, abutments, deck joints, retaining walls, columns, piers, pier caps and approach slabs;
 - ii. foundation, backfill, and subsurface Elements;
 - iii. drainage Elements;
 - iv. roadway Elements; and
 - v. all Elements identified as Developer’s responsibility in Appendix E to Section 4 of Schedule 10 (*Design and Construction Requirements*) to the Project Agreement.
- “Cover Top Maintainer” means the City of Denver and any entity contracted by the City of Denver from time to time to carry out the Cover Top O&M Work.
- “Cover Top O&M Manual” has the meaning given to it Section 3.2.3.e of Schedule 11 (*Operations and Maintenance Requirements*).
- “Cover Top O&M Work” means any and all operations, management, administration, maintenance, repair, preservation, modification, reconstruction, rehabilitation, restoration, renewal and replacement work and activities undertaken after the Final Acceptance Date or (in the case of the elements referred to in paragraphs a. and b. of this definition) after the end of the Landscape Warranty period (as described in Section 14.11 of Schedule 10 (*Design and Construction Requirements*) to the Project Agreement) in relation to all Elements with respect to the Cover above (A) the protection course and root barrier protection at landscape areas and (B) the protection course at vehicular and pedestrian traffic areas, including:
- a. all landscaping, planting, soil, and other vegetation;
 - b. all irrigation systems;

- c. all drainage systems;
- d. all park, pedestrian, cyclist, and other aesthetic and urban amenities, features, site furnishings, buildings and structures, such as any shade coverage and any walls;
- e. all lighting, electrical and mechanical components and equipment;
- f. all road, cycling, pedestrian, and park, playground, and field surfaces (including, for example, unit paving, concrete or asphalt paving, curbs, crush stone surfacing, playground surfacing, and synthetic field) and any associated grading and overlay;
- g. all barriers, gates, fences (other than the fencing referred to in paragraph b. of the definition of Cover O&M Work in this Part A of Annex A (*Definitions and Abbreviations*)), bollards, posts, poles and railings;
- h. all elements of the Project Special Provision Section 519 Garden Roof Assembly (as described in Appendix A of Section 14 of Schedule 10 (*Design and Construction Requirements*) to the Project Agreement), excluding:
 - i. the monolithic waterproofing membrane;
 - ii. any reinforcing and flashing;
 - iii. the protection course and root barrier protection at landscape areas;
 - iv. the protection course at vehicular and pedestrian traffic areas,

and, for certainty, including all other elements of such "Garden Roof Assembly" including:

 - v. insulation (EPS geof foam);
 - vi. drainage / water retention components;
 - vii. filter fabrics;
 - viii. soil;
 - ix. garden roof accessory components; and
 - x. erosion control materials; and
- i. all other elements described in Section 14 of Schedule 10 (*Design and Construction Requirements*) to the Project Agreement that do not fall within the scope of the Cover O&M Work,

provided that Cover Top O&M Work shall exclude:

- j. any O&M Work that falls within paragraphs a., b., c. and d. of the definition of Cover O&M Work in this Part A of Annex A (*Definitions and Abbreviations*); and
- k. any O&M Work After Construction required to be undertaken by the O&M Contractor pursuant to Part 2, Section 9 as a result of any breach of any Warranty in relation to any of the elements of the Cover falling within the

scope of this definition.

- “CP Deduction Month” has the meaning given to it in Section 1(a) of Part 1 of Schedule 6 (*Performance Mechanism*).
- “CPI” means the Consumer Price Index All items (BES Series ID CUUR0000SA), as published by the United States Department of Labor, Bureau of Labor Statistics, for which the base year is 1982-84 = 100, or if such publication ceases to be in existence, a comparable index selected by the Enterprises and approved by Developer, acting reasonably, provided that:
- a. if the CPI is revised so that the base year differs from that set out above, the CPI shall be converted in accordance with the conversion factor published by the Bureau of Labor Statistics; and
 - b. if the Bureau of Labor Statistics otherwise alters its method of calculating such index, the Parties shall mutually determine appropriate adjustments in the affected index.
- “Critical Velocity” means the minimum longitudinal air velocity required to prevent backflow of smoke, and which is a function of tunnel geometry and design fire characteristics.
- “Cross Drain” means pipes or culverts that convey water without interruption from one side of a road to the other.
- “CRPM” has the meaning given to it in Section 1.1.1 of Schedule 15 (*Federal and State Requirements*).
- “Cure Period” means, for any O&M Noncompliance Event, the “Cure Period” (if any) specified for such O&M Noncompliance Event in Table 6A.1 or Table 6A.2, as applicable, which shall commence on and from the Noncompliance Start Time of such O&M Noncompliance Event.
- “Default Interest” means interest accruing at the Default Interest Rate on a payment that is due but unpaid.
- “Default Interest Rate” means, for each Calendar Day during which Default Interest accrues pursuant to this Agreement, the rate per annum equal to the 30 Calendar Day British Bankers Association LIBOR Rate (“BBA LIBOR”), as published by Reuters (or other commercially available source providing quotations of BBA LIBOR as designated by the Enterprises from time to time) at approximately 11:00 a.m., London time for dollar deposits (for delivery on the first Calendar Day on which Default Interest is due) plus 200 basis points, provided that if such rate is not available at such time for any reason, then the Default Interest rate shall be the rate per annum determined by the Enterprises as provided by a similar organization.
- “Defect” means a defect, howsoever caused, affecting the condition, use, functionality or operation of any Element.
- “Defect Remedy Period” means (subject to any extension pursuant to Part 2, Section 12.5.2):
- a. for a Category 1 Defect, the maximum time period for taking and completing the action required by Section 4.2.2 of Schedule 11 (*Operations and Maintenance Requirements*), being the time period set out in the column headed “Cat 1 Immediate Action” in the Performance and Measurement Tables; or

- b. for a Category 2 Defect, the maximum time period for taking and completing the action required by Section 4.2.3 of Schedule 11 (Operations and Maintenance Requirements), being the time period set out in the column headed “Cat 2 Permanent Repair” in the Performance and Measurement Tables,

in each instance commencing from the time that the O&M Contractor first becomes (or should have become) aware of the existence of the relevant O&M Defect, provided that, for certainty, if any such period is specified as “N/A”, the relevant O&M Defect shall be deemed to have no remedy period or, for the purposes of Schedule 6 (Performance Mechanism), no Cure Period.

<u>“Delay Relief Events”</u>	has the meaning given to it in paragraph <u>a.</u> of the definition of Relief Event in this <u>Part A of Annex A (Definitions and Abbreviations)</u> .
<u>“Delayed Completion”</u>	has the meaning given to it in the Interface Agreement.
<u>“Deliverable”</u>	means any written document, drawing, report, plan or other material or information, regardless of form and including any draft, required pursuant to this Agreement to be submitted or resubmitted to the Enterprises or the Department, as applicable, for Approval, Acceptance, any other consent, approval or like assent, or Information, excluding, for certainty, notices and correspondence.
<u>“Deliverables Tables”</u>	means, collectively, the Deliverables tables in <u>Schedule 8 (Project Administration)</u> , <u>Schedule 11 (Operations and Maintenance Requirements)</u> , <u>Schedule 15 (Federal and State Requirements)</u> (other than the first Deliverable listed in the Deliverables Table in <u>Schedule 15</u>), <u>Schedule 17 (Environmental Requirements)</u> and <u>Schedule 18 (Right-of-Way)</u> .
<u>“Denver IGA”</u>	means the Intergovernmental Agreement among CDOT, HPTE, BE and the City of Denver dated as of September 14, 2015, as supplemented by the letters dated February 21, 2017 and April 21, 2017, copies of which were included in the Reference Documents.
<u>“Denver Planned Projects”</u>	means the projects listed in <u>Appendix B to Section 9 of Schedule 10 (Design and Construction Requirements)</u> to the Project Agreement.
<u>“Department”</u>	means: <ul style="list-style-type: none"> a. CDOT acting pursuant to a delegation of authority by the Enterprises pursuant to <u>Section 18</u> of the Project Agreement; or b. the Enterprises, but only if and to the extent that: <ul style="list-style-type: none"> i. the context may require; or ii. the Developer otherwise notifies the O&M Contractor.
<u>“Department Provided Approvals”</u>	means: <ul style="list-style-type: none"> a. each of the Governmental Approvals listed in <u>Table 9-1 in Section 9.4.15 of Schedule 10 (Design and Construction Requirements)</u> to the Project Agreement; b. each of the Governmental Approvals listed in <u>Table 17-1 of Schedule 17 (Environmental Requirements)</u> to the Project

	Agreement; and
	c. the “Interstate Access Request” identified in the Reference Documents.
<u>“Designated Senior Representative”</u>	means: <ol style="list-style-type: none"> a. in the case of O&M Contractor, Sara Henningsgaard (or, a successor representative as notified by the O&M Contractor to the Developer from time to time); and b. in the case of the Developer, its Project Manager (or a successor representative as notified by the Developer to the O&M Contractor from time to time).
<u>“Detailed Supervening Event Submission”</u>	has the meaning given to it in Part 2, <u>Section 15.1.2.b.i.</u>
<u>“Developer”</u>	has the meaning given in the preamble to Part 1.
<u>“Developer Act”</u>	means a failure to comply in any material respect with any of its obligations under this Agreement or the Project Agreement by the Developer (including, for the avoidance of doubt, such failure in respect of any applicable Excluded Obligation), other than (i) any such failure that arises from an act or omission of the Enterprises, the O&M Contractor, any other O&M Contractor-Related Entity, the Construction Contractor, or any other Construction Contractor-Related Entity, or a Relief Event or Compensation Event, or (ii) in respect of any failure to comply that is otherwise excused or waived under the terms of this Agreement (including as determined pursuant to the Dispute Resolution Procedure) or by applicable law.
<u>“Developer Agreements”</u>	has the meaning given to it in <u>Part B of Schedule 2 (Representations and Warranties)</u> .
<u>“Developer Change”</u>	Means a Change initiated by the Developer pursuant to a Developer Change Notice.
<u>“Developer Change Notice”</u>	has the meaning given to it in Part 2, <u>Section 14.1.1.c.</u>
<u>“Developer Default”</u>	has the meaning given to it in Part 2, <u>Section 32.3.1.</u>
<u>“Developer Default Cure Period”</u>	has the meaning given to it in Part 2, <u>Section 32.3.1.</u>
<u>“Developer Directive Letter”</u>	has the meaning given to it in <u>Section 1.5.a of Schedule 24 (Change Procedure)</u> .
<u>“Developer Insurance Policies”</u>	has the meaning given to it in Part 2, <u>Section 25.1.1.</u>
<u>“Developer-Related Entities”</u>	has the meaning given to such term in the Project Agreement.
<u>“Developer Release of Hazardous Substances”</u>	means any Release of Hazardous Substances on, in, under, from or in the vicinity of the Site caused by Developer or any other Developer-Related Entity to the extent such Release: <ol style="list-style-type: none"> a. arises as a result of any breach of Law, Governmental Approval, Permit or this Agreement, fraud, willful misconduct, criminal conduct, recklessness, bad faith or negligence by or of Developer or any other Developer-

	Related Entity; or
	b. constitutes the Release of Hazardous Substances arranged to be brought onto the Site by Developer or any other Developer-Related Entity.
<u>“Developer Retained Expansion”</u>	has the meaning given to such term in the Project Agreement.
<u>“Developer Right”</u>	has the meaning given in Part 1, Article 6.1.
<u>“Developer’s Representative”</u>	has the meaning given to it in Part 2, <u>Section 18.2.1.a</u> .
<u>“Directive Letter”</u>	means either an Enterprise Directive Letter or a Developer Directive Letter.
<u>“Disadvantaged Business Enterprise”</u>	a State-certified “Disadvantaged Business Enterprise” listed on the Colorado Unified Certification Program DBE Directory.
<u>“discretion”</u>	has the meaning given to it in Part 2, <u>Section 2.2.2.b</u> .
<u>“Discriminatory Change in Law”</u>	means a Change in Law, the terms of which only apply to: <ul style="list-style-type: none"> a. the Project, or the Project and Similar Projects; and/or b. the O&M Contractor and not to other Persons (unless such Persons are public-private partnership project operations and maintenance contractors engaged in Similar Projects (and in roles similar to the O&M Contractor on such projects)), <p>and in the case of each of paragraphs <u>a.</u> and <u>b.</u> excluding any Change in Law to the extent such is made in response to any breach of Law, Governmental Approval, Permit or this Agreement, or fraud, willful misconduct, criminal conduct, recklessness, bad faith or negligence of any O&M Contractor-Related Entity.</p>
<u>“Dispute”</u>	means any dispute between the Developer and the O&M Contractor arising out of or in connection with this Agreement.
<u>“Dispute Resolution Procedure”</u>	means the procedure for the resolution of Disputes set out in Part 2, <u>Section 38</u> and <u>Schedule 25</u> (<i>Dispute Resolution Procedure</i>).
<u>“Document Control System”</u>	means the system established and maintained by the Developer pursuant to <u>Section 13.1.1</u> of <u>Schedule 8</u> (<i>Project Administration</i>).
<u>“DRIR”</u>	means the Denver Rock Island Railroad.
<u>“DRIR Crossing”</u>	means the existing and/or proposed crossing by the DRIR Railroad through the I-70 East corridor on the Right-of-Way as described in <u>Section 10.1.6</u> of <u>Schedule 10</u> (<i>Design and Construction Requirements</i>) to the Project Agreement.
<u>“DRIR RRA”</u>	means the railroad agreement between CDOT and DRIR in relation to the Project, a draft of which agreement was provided to the O&M Contractor as one of the Reference Documents numbered 29.10.10.03.
<u>“DRIR Work”</u>	means all duties and services to be furnished and provided by the DRIR as required by the DRIR RRA.
<u>“Drop Site”</u>	has the meaning given to it in <u>Section 1.2 B</u> of <u>Appendix B</u> of <u>Schedule 11</u> (<i>Operations and Maintenance Requirements</i>).
<u>“DPS MOA”</u>	means the Memorandum of Agreement between CDOT and School District

	No. 1 of the City and County of Denver dated as of October 11, 2016.
<u>“DRTL”</u>	has the meaning given to it in <u>Section 7 of Schedule 9 (Submittals)</u> .
<u>“Durability Plan”</u>	means the plan for addressing the durability of all Residual Elements prepared and updated in accordance with <u>Section 8 of Schedule 8 (Project Administration)</u> .
<u>“E-470 Installation Agreement”</u>	means the installation task order in relation to the Project to be executed between HPTE and the ETC System Integrator pursuant to the E-470 TSA.
<u>“E-470 TSA”</u>	means the tolling services agreement between HPTE and the ETC System Integrator dated May 7, 2015.
<u>“ECMTP”</u>	has the meaning given to it in <u>Section 6.1.1 of Schedule 17 (Environmental Requirements)</u> .
<u>“ECWP”</u>	has the meaning given to it in <u>Section 2.1.1 of Schedule 17 (Environmental Requirements)</u> .
<u>“Electronic Toll Collection System”</u>	means the barrier free, non-cash road charging system, including all signage, civil and telecommunications infrastructure and back-office facilities, that allows free-flow movement for I-70 Mainline users to enter and exit the Tolloed Express Lanes without having to stop to pay cash tolls.
<u>“Element”</u>	means an individual component, system or subsystem of the Project, which shall, when used in relation to the O&M Work After Construction, include at a minimum a breakdown into the items described in the column headed “Element” in the Performance Requirements (as such items are further subdivided into subsections where appropriate).
<u>“Eligible Financial Institution”</u>	means a bank or financial institution: <ul style="list-style-type: none"> a. having an office in Denver, Colorado or New York, New York at which a letter of credit issued by it can be presented for payment by hand delivery, electronic means or fax; and b. having a Minimum Issuer Rating from at least two Rating Agencies, <p>where for purposes of this definition “Minimum Issuer Rating” means a long-term unsecured debt rating of at least:</p> <ul style="list-style-type: none"> i. “A-” by Standard & Poor’s Ratings Services; ii. “A-” by Fitch, Inc.; iii. “A3” by Moody’s Investors Service, Inc.; or iv. “A low” by DBRS, Inc., <p>in each case with an outlook of “stable” or better.</p>
<u>“Eligible Insurer”</u>	means an insurer that: <ul style="list-style-type: none"> a. is either: <ul style="list-style-type: none"> i. admitted or authorized in the State; or ii. if not admitted or authorized in the State, based in Bermuda, the United Kingdom or the Republic of Ireland; b. except as otherwise Approved by the Developer, has either (i) a policyholder’s management and financial size category

rating of not less than “A-X” according to A.M. Best’s Financial Strength Rating and Financial Size Category or (ii) a rating of not less than “BBB” according to Standard and Poor’s Ratings Services;

- c. is not the subject of:
 - i. an Insolvency Event; or
 - ii. a Governmental Authority order or directive limiting its business activities as related to or affecting any Insurance Policies placed or to be placed with such insurer; and
- d. satisfies any conditions imposed by the Developer as a condition to any Approval given pursuant to paragraph b. of this definition.

“Eligible Surety”

means a surety authorized to issue bonds in the State having either:

- a. a Minimum Eligible Surety Rating from at least two Rating Agencies; or
- b. a rating of at least “A-” and “Class VIII” from A.M. Best Company, Inc. (but only if it is at the relevant time a Registered Rating Agency),

where for purposes of this definition “Minimum Eligible Surety Rating” means a long-term unsecured debt rating of at least:

- i. “A” by Standard & Poor’s Rating Services;
- ii. “A” by Fitch, Inc.;
- iii. “A2” by Moody’s Investors Service, Inc.; or
- iv. “A” by DBRS, Inc.,

in each case with an outlook of “stable” or better.

“Emergency”

means any non-ordinary course event affecting the Project, whether directly or indirectly, that:

- a. is an immediate or imminent threat, or, if not promptly addressed, a potential threat, to the safety of the public;
- b. causes disruption or, if not promptly addressed, has the potential to cause disruption, to the free flow of traffic on or about the Project;
- c. is an immediate or imminent threat to the long term integrity of any part of the infrastructure of the Project, to the Environment, any Improvements or to property adjacent to the Project;
- d. is recognized by the Enterprises or CDOT as an emergency pursuant to Fiscal Rule 2-2 of the State of Colorado Fiscal Rules; or
- e. is recognized or declared as an emergency by the Governor of the State, FEMA, the U.S. Department of Homeland Security or any other Governmental Authority with legal authority to recognize or declare an emergency.

“Emergency Repair Work” means temporary and/or permanent repair work that results from an

	Emergency of the type specified in paragraph <u>c.</u> or <u>d.</u> of the definition thereof in this <u>Part A of Annex A (Definitions and Abbreviations)</u> .
<u>“Emergency Services”</u>	means any Federal, State or local police, fire, emergency or other public safety Governmental Authorities (including the National Guard), and any other security or emergency personnel acting at the direction of any Governmental Authority.
<u>“Emerging Small Businesses”</u>	any business certified by CDOT to participate in CDOT’s ESB program that has not otherwise lost such certification due to graduation or revocation.
<u>“Encumbrance”</u>	means any mortgage, pledge, hypothecation, deed of trust, mortgage, security interest, lien, financing statement, charge, option, assignment or encumbrance of any kind or any arrangement to provide priority or preference, including any easement, right-of-way, restriction (whether on voting, sale, transfer, disposition, use or otherwise), right, lease and other encumbrance on title to real or personal property (whether or not of record), whether voluntary or imposed by Law, and any agreement to give any of the foregoing.
<u>“Enterprises”</u>	has the meaning given in Recital A of Part 1.
<u>“Enterprise Change”</u>	means a Change initiated by the Enterprises pursuant to an Enterprise Change Notice.
<u>“Enterprise Change Notice”</u>	has the meaning given to it in Part 2, <u>Section 14.1.1.a.</u>
<u>“Enterprise Claim”</u>	has the meaning given in Part 1, Article 7.1.
<u>“Enterprise Default”</u>	has the meaning given to it in the Project Agreement.
<u>“Enterprise Default Cure Period”</u>	has the meaning given to it in the Project Agreement.
<u>“Enterprise Directive Letter”</u>	has the meaning given to it in <u>Section 1.4.a</u> of <u>Schedule 24 (Change Procedure)</u> .
<u>“Enterprise Release of Hazardous Substances”</u>	means any Release of Hazardous Substances on, in, under, from or in the vicinity of the Site caused by the Enterprises, CDOT or any other State Governmental Authority, including any such Release caused by any Person (other than a Developer-Related Entity or an O&M Contractor-Related Entity) in the course of acting on behalf of the Enterprises, CDOT or any other State Governmental Authority, which Release: <ul style="list-style-type: none"> a. occurs: <ul style="list-style-type: none"> i. with respect to any ROW Parcel, after the Setting Date; and ii. with respect to any Additional ROW Parcel, on or after its Project License Start Date; b. is required to be investigated, removed, treated, stored, transported, managed and/or remediated pursuant to Law, any Governmental Approval or the O&M Contractor’s obligations under this Agreement, <p>excluding any such Release to the extent such results in the presence of Hazardous Substances in groundwater.</p>
<u>“Enterprise”</u>	has the meaning given to it in the Project Agreement.

Representative

“Enterprises’ O&M Direct Agreement” means an agreement in substantially the form attached as Part B of Schedule 19 (Forms of Direct Agreements) to the Project Agreement by and among the Enterprises, the Developer and the O&M Contractor.

“Environment”

means air, soils, submerged lands, surface waters (including wetlands), groundwaters, land, stream sediments, surface or subsurface strata, biological resources, including endangered, threatened and sensitive species, and natural systems, including ecosystems, historic, archeological and paleontological resources.

“Environmental Approval”

means any Governmental Approval or Permit required for the Project or the Work pursuant to Environmental Law (including, for certainty, the FEIS, the ROD and any Reevaluation).

“Environmental Law”

means any Law applicable to the Project or the O&M Work After Construction requiring consideration of impacts on the Environment or addressing, regulating or imposing liability, actions or standards of conduct that pertains to the Environment, Hazardous Substances, contamination of any type whatsoever, or environmental health and safety matters, and any lawful requirements and standards that pertain to the Environment, Hazardous Substances, contamination of any type whatsoever, or environmental health and safety matters, set out in any permits, licenses, approvals, plans, rules, regulations, administrative or judicial orders, ordinances or other Governmental Approvals adopted, or other criteria and guidelines promulgated, pursuant to such Law, including in each case those relating to:

- a. the manufacture, processing, use, distribution, existence, treatment, storage, disposal, generation, transportation and Release of Hazardous Substances;
- b. protection of wildlife, animal or plant species listed as threatened or endangered under and subject to an applicable threatened or endangered species Law, species, other sensitive species, wetlands, water courses and water bodies, antiquities, fossils, coins, articles of value, precious minerals, cultural artifacts, human burial sites and remains and other similar remains of archaeological, cultural or paleontological interest, natural resources, and of the Environment generally;
- c. the operation and closure of underground storage tanks;
- d. human health and safety; and
- e. notification documentation and record keeping requirements relating to the foregoing.

“Environmental Manager” means the “Environmental Manager”, initially as identified in Schedule 27 (Key Personnel), subject to replacement pursuant to Part 2, Section 16.2.

“Environmental Requirements”

means the requirements set out in Schedule 17 (Environmental Requirements), including the obligation to comply with Environmental Law and all Environmental Approvals.

“Equivalent Claim”

has the meaning given in Part 1, Article 6.3.

“Equivalent Claim Notice”

has the meaning given in Part 1, Article 6.2.

- “Equivalent Project Relief” has the meaning given in Part 1, Article 6.1.
- “ETC System Integrator” means the E-470 Public Highway Authority, a political subdivision of the State formed under the Public Highway Authority Law, Part 5 of Article 4 of Title 43, C.R.S.
- “Exceptional Cost” means, in respect of an Insurance Review Period, the amount, if positive (and, if not, \$0), calculated as:
“Exceptional Cost” = Insurance Cost Increase – (20% x Base Benchmarked Insurance Cost in respect of that Insurance Review Period).
- “Exceptional Saving” means, in respect of an Insurance Review Period, the amount if positive (and, if not, \$0), calculated as:
“Exceptional Saving” = Insurance Cost Decrease – (20% x Proposal Benchmarked Insurance Cost in respect of that Insurance Review Period).
- “Excess Costs” means costs and expenses of the following activities as incurred by the O&M Contractor as a result of the occurrence of a Non-Appendix B Parcel Unexpected Hazardous Substances Event or an Appendix B Parcel Unexpected Hazardous Substances Event in connection with:
- a. the off-site transportation and disposal of the relevant Unexpected Hazardous Substance(s):
 - i. trucking costs from the Site to the applicable disposal site, as such costs and expenses are calculated in accordance with Sections 2.1, 2.3, 2.5 and 2.6 (as applicable) of Appendix A to Schedule 24 (Change Procedure); and
 - ii. tipping fees at such disposal site, as such costs and expenses are calculated in accordance with Sections 2.5 and 2.6 of Appendix A to Schedule 24 (Change Procedure); and
 - b. the on-site investigation, removal, treatment, management and/or remediation of any:
 - i. non-naturally occurring radioactive waste (excluding such waste resulting from lawful household or medical uses); or
 - ii. lost or abandoned military-grade munitions (excluding firearms and firearms ammunition) that are at such time primed, fused, armed or otherwise prepared for use and which remain unexploded,

following advance notice of such activities to the Developer, the Enterprises and other Governmental Authorities in accordance with Law, and with respect to which the Enterprises have not exercised their rights under Section 23.1.3 of Schedule 17 (*Environmental Requirements*) of the Project Agreement with respect to such materials,
- in all cases excluding:
- c. any internal costs, fees or expenses of any O&M Contractor-Related Entity except to the extent expressly permitted in accordance with Section 2.6 of Appendix A to Schedule 24 (Change Procedure) as and to the extent

provided for in paragraphs a. and b. of this definition; and

- d. any costs or expenses that are expressly provided to be incidental and excluded pursuant to the terms of Schedule 17 (Environmental Requirements).

“Excess Groundwater Costs”

means any costs and expenses for the following as incurred by the O&M Contractor:

- a. Intentionally Omitted
- b. as a result of the occurrence during either the Construction Period or the Operating Period of any Unexpected Groundwater Contamination Event of the type referenced in paragraph b. of the definition thereof in this Part A of Annex A (Definitions and Abbreviations), any capital expenditure in accordance with GAAP incurred to treat and/or remediate any Unexpected Groundwater Contamination Condition to enable the O&M Contractor to perform O&M Work After Construction (whether such expenditure is incurred either during the Construction Period or during the Operating Period, provided that such expenditure (even if required to be incurred during the Construction Period) solely and exclusively relates to the performance of O&M Work After Construction) is in excess of that required to be incurred by Developer in complying with its obligations pursuant to Sections 8.4.4.e.iv and 8.4.4.h. of Schedule 10 (Design and Construction Requirements) to the Project Agreement; and
- c. as a result of the occurrence during the Operating Period of any Unexpected Groundwater Contamination Event of the type referenced in paragraph b. of the definition thereof in this Part A of Annex A (Definitions and Abbreviations), any other costs or expenses as described in paragraphs a.v., a.vi. and a.vii. of the definition of Change in Costs in this Part A of Annex A (Definitions and Abbreviations) to the extent the incurrence of any such costs or expenses by the O&M Contractor is necessary as a result of it having incurred any capital expenditure referenced in paragraph b. of this definition (including, for certainty, as a result of the occurrence during either the Construction Period or the Operating Period of any Unexpected Groundwater Contamination Event of the type referenced in paragraph b. of the definition thereof in this Part A of Annex A (Definitions and Abbreviations)) and such costs and expenses relate to such capital expenditure,

in all cases:

- d. to the extent applicable with respect to paragraphs b. and c. of this definition, as any such amounts are calculated in accordance with Appendix A to Schedule 24 (Change Procedure); and
- e. excluding:
 - i. any internal costs, fees or expenses of any O&M Contractor-Related Entity except to the extent expressly permitted in accordance with Section 2.6

of Appendix A to Schedule 24 (*Change Procedure*) either (A) as and to the extent provided for in paragraphs a.i. and a.ii. of this definition or (B) with respect to the costs and expenses calculated pursuant to paragraphs b. and c. of this definition; and

- ii. any costs or expenses that are expressly provided to be incidental and excluded pursuant to the terms of Schedule 17 (*Environmental Requirements*).

“Exclusion” has the meaning given to it in O&M Contractor Default number (10) in Part 2, Section 32.1.1.

“Excluded Obligations” has the meaning given in Part 1, Article 4.6.

“Excused Closure” means:

- a. any Closure arising as a direct result of:
 - i. a Compensation Event;
 - ii. a Relief Event;
 - iii. an Emergency;
 - iv. the performance of Snow and Ice Control Services in accordance with the requirements of Section 11 of Schedule 11 (*Operations and Maintenance Requirements*); or
 - v. O&M Work After Construction required to be performed in connection with the removal of debris or obstructions, patrols or inspections that requires the Closure of a shoulder where such Closure is too brief to require the implementation of a Closure in accordance with the O&M Contractor’s most recently Approved Transportation Management Plan;
- b. any Closure under the control of the Emergency Services;
- c. any Closure that:
 - i. was previously under the control of the Emergency Services; and
 - ii. continues to subsist after the Emergency Services have returned operational control of all parts of the Project affected by such Closure to the O&M Contractor, provided that, if any such Closure continues to subsist for a period in excess of 30 minutes after such control has been returned to the O&M Contractor, any such excess period shall not be an Excused Closure;
- d. any Closure expressly ordered by, and continuing only for so long as ordered by, the Developer, the Enterprises, CDOT or any Governmental Authority;
- e. any Closure of a shoulder that is required for the sole purpose of performing the repair of a Category 1 Defect, but only to the extent that any such Closure persists for no

longer than the Defect Remedy Period applicable to the relevant Category 1 Defect; or

- f. any Closure required solely by the ETC System Integrator for the performance of its obligations pursuant to the E-470 TSA or the E-470 Installation Agreement, provided that, for certainty, to the extent that the O&M Contractor performs any O&M Work After Construction on the portion of the Project that is subject to such a Closure during such Closure, such Closure shall not be an Excused Closure within this paragraph f;

but only to the extent that, in the case of any such Closure:

- g. such Closure does not arise as a result of any breach of Law, Governmental Approval, Permit or this Agreement, fraud, willful misconduct, criminal conduct, recklessness, bad faith or negligence by or of any O&M Contractor-Related Entity; and
- h. the O&M Contractor is using its Reasonable Efforts to:
 - i. mitigate the impact of the relevant Closure;
 - ii. reopen the affected part(s) of the Project as quickly as possible to traffic; and
 - iii. if such Closure arose as the direct result of an Emergency, respond to the Emergency in accordance with the requirements of this Agreement.

<u>“Existing CDOT Right-of-Way”</u>	means that portion of CDOT’s existing I-70 East corridor right-of-way identified in the Right-of-Way Exhibits in the Contract Drawings.
<u>“Exit Zone”</u>	means the length of roadway between the Interior Zone and the exit Portal and which has variable illumination based upon the scene luminance exiting the Portal.
<u>“Expiry Date”</u>	has the meaning given to it in the Project Agreement.
<u>“Extended Event”</u>	has the meaning given to it in the Project Agreement.
<u>“Federal Law”</u>	means all Law of the Federal government of the United States of America.
<u>“FEIS”</u>	has the meaning given to it in the Project Agreement.
<u>“FEMA”</u>	means the Federal Emergency Management Agency.
<u>“FHWA”</u>	has the meaning given to it in the Recitals.
<u>“FHWA 1273”</u>	has the meaning given to it in <u>Section 2.5.1</u> of <u>Schedule 15</u> (<i>Federal and State Requirements</i>).
<u>“Final Acceptance”</u>	means the satisfaction of all Final Acceptance Conditions, as confirmed by the Developer’s providing a copy of the Final Acceptance Certificate.
<u>“Final Acceptance Certificate”</u>	has the meaning given to it in the Project Agreement.
<u>“Final Acceptance Conditions”</u>	has the meaning given to it in the Project Agreement.
<u>“Final Acceptance Date”</u>	has the meaning given to it in the Project Agreement.

<u>“Final Acceptance Deadline Date”</u>	means the date which is 90 Calendar Days after the Substantial Completion Date, as such deadline may be extended from time to time pursuant to a Change documented in a Change Order.
<u>“Final Payment Month”</u>	means the final month that commences during the Operating Period.
<u>“Final Project Information Date”</u>	has the meaning given to it in the Project Agreement.
<u>“Final Warning Notice”</u>	has the meaning given to it in Part 2, <u>Section 22.2.2</u> .
<u>“Financial Close”</u>	has the meaning given to it in the Project Agreement.
<u>“Financial Close Date”</u>	means the date on which Financial Close occurs.
<u>“Financial Close Deadline”</u>	has the meaning given to it in the Project Agreement.
<u>“Financial Close Termination Amount”</u>	has the meaning given to it in the Project Agreement.
<u>“Financial Model”</u>	has the meaning given to it in the Project Agreement.
<u>“Financing Agreements”</u>	has the meaning given to it in the Project Agreement.
<u>“Financing Documents”</u>	has the meaning given to it in the Project Agreement.
<u>“First Payment Month”</u>	means the month in which the Substantial Completion Date occurs.
<u>“Force Majeure Event”</u>	<p>means any:</p> <ul style="list-style-type: none"> a. war, civil war, invasion or armed conflict; b. act of terrorism or sabotage; c. nuclear, chemical or biological contamination or emissions (including as applicable associated radiation), excluding such contamination, the source or cause of which is the result of any actions of, inaction by, or breach of contract or Law by, the Affected Party; d. blockade or embargo; or e. labor dispute, including a strike, lockout or slowdown, generally affecting the road construction industry in the Denver metropolitan area or a significant sector of it, <p>that occurs after the Agreement Date and that materially and adversely affects the performance by either Party or both Parties (each an <u>“Affected Party”</u>) of its or their obligations under this Agreement.</p>
<u>“GAAP”</u>	means Generally Accepted Accounting Principles in the US as in effect from time to time.
<u>“General Purpose Lane”</u>	means a non-tolled travel lane on the I-70 Mainline within the O&M Limits.
<u>“General Requirements”</u>	means the requirements set out in the column headed “General Requirement” in the Performance and Measurement Tables.
<u>“Good Industry Practice”</u>	means that degree of skill, care, prudence, foresight and practice which would reasonably and ordinarily be expected from time to time of a skilled and experienced professional designer, engineer, constructor, maintainer or operator, as applicable, engaged in the same type of activity in North America as that of the O&M Contractor, or any other Person to which such

term relates, seeking to comply with all Law and the same type of obligations and responsibilities in North America as the obligations and responsibilities of the O&M Contractor under this Agreement and/or the obligations and responsibilities of such Person under the same or similar circumstances.

“Governmental Approval” means any approval, authorization, certification, consent, decision, exemption, filing, license, permit, agreement, concession, grant, franchise, registration or ruling issued, granted or required by or with any Governmental Authority (excluding, for certainty, any Public Utility or Railroad) for the performance of any of the O&M Contractor’s obligations under this Agreement.

“Governmental Authority” means any:

- a. United States Federal, State or local government, and any political subdivision of any of them; and
- b. any interstate, governmental, quasi-governmental, judicial, public, regulatory or statutory instrumentality, administrative agency, authority, body or entity of, or formed by, any such government or subdivision thereof,

in each case other than the Enterprises.

“Grace Period” means, subject to Section 1.2(b)(i) of Part 6 of Schedule 6 (*Performance Mechanism*), for any O&M Noncompliance Event, the “Grace Period” (if any) specified for such O&M Noncompliance Event in Table 6A.1 or Table 6A.2, as applicable, which period shall commence on and from the Noncompliance Start Time of such O&M Noncompliance Event and shall end at the same time of day as such Noncompliance Start Time on the day which is the number of days specified as the “Grace Period” for such O&M Noncompliance Event after the day on which such Noncompliance Start Time occurs.

“Groundwater Contamination Event Period” means, with respect to any Unexpected Groundwater Contamination Condition that occurs during the Construction Period, the then current three month period ending on March 31, June 30, September 30 or December 31, as applicable.

“Hazardous Substances” means any of the following:

- a. any substance, product, waste or other material of any nature whatsoever which is or becomes listed, regulated, or addressed pursuant to Environmental Law;
- b. any substance, product, waste or other material of any nature whatsoever that exceeds maximum allowable concentrations for elemental metals, organic compounds or inorganic compounds for the protection of human health and safety and/or the Environment, as defined by any Environmental Law;
- c. any substance, product, waste or other material of any nature whatsoever which may give rise to liability pursuant to Environmental Law, as defined by any Environmental Law, or under any statutory or common law theory based on negligence, trespass, intentional tort, nuisance or strict liability or under any reported decisions of a State or Federal

	court;
	d. petroleum or crude oil excluding <i>de minimis</i> amounts and excluding petroleum and petroleum products contained within regularly operated motor vehicles;
	e. lead or lead-containing materials; and
	f. asbestos or asbestos-containing materials.
<u>“High Occupancy Vehicle”</u>	means a vehicle occupied by more than two persons.
<u>“Holiday”</u>	means any Calendar Day that is declared or considered to be a holiday pursuant to C.R.S. §§ 24-11-101(1)-(2).
<u>“HPTE”</u>	has the meaning given in Recital A of Part 1.
<u>“I-70 Cover Plans”</u> or <u>“Cover Plans”</u>	means the plans for the Cover included in <u>Schedule 10B</u> (<i>Contract Drawings</i>) to the Project Agreement.
<u>“I-70 East EIS”</u>	means all versions of the NEPA documentation for the Project, including all draft and supplemental draft environmental impact statements, the FEIS and the ROD.
<u>“I-70 Mainline”</u>	means Interstate 70, including the Tolled Express Lanes, General Purpose Lanes, auxiliary lanes, buffers, enforcement areas, shoulders, hard capped surface, ramps up to the intersecting cross-roadway (including directional island and free-flow turn lane where present) and associated collector-distributor roads.
<u>“Improvement”</u>	means any building or structure, including any sewer or septic system, storm drain, publicly owned treatment work or waste treatment, storage or disposal system.
<u>“Incident”</u>	means any event that impedes the normal flow of traffic.
<u>“Incident Response Plan”</u>	has the meaning given to it in <u>Section 9.4</u> of <u>Schedule 11</u> (<i>Operations and Maintenance Requirements</i>).
<u>“Incidental Utility Work”</u>	has the meaning given to it in the applicable URA.
<u>“Increased Oversight Threshold”</u>	means the occurrence of any of the following: <ul style="list-style-type: none"> a. during the Operating Period, the cumulative number of O&M Noncompliance Points accrued during: <ul style="list-style-type: none"> i. any rolling 12 month period equals or exceeds 100; or ii. any rolling 36 month period equals or exceeds 200; <p>provided that, for certainty, any O&M Noncompliance Point that is being disputed in good faith by Developer shall be disregarded for purposes of determining whether the Increased Oversight Threshold has been met or exceeded until such time as it has been Agreed or Determined that the relevant O&M Noncompliance Point was validly assigned.</p>
<u>“Indemnified Party”</u>	means (a) with respect to the indemnity granted in favor of the Developer under Part 2, <u>Section 24.2</u> , the Developer, each Developer-Related Entity, each Principal Indemnified Party and each of their respective officers, directors, agents and employees, and (b) with respect to the indemnity granted in favor of the O&M Contractor under Part 2, <u>Section 24.1</u> , the O&M Contractor and its officers, directors, agents and employees.

<u>“Indemnifying Party”</u>	means the O&M Contractor or the Developer, as applicable.
<u>“Independent Assurance”</u>	means the reviews and tests described in <u>Schedule 8</u> (<i>Project Administration</i>).
<u>“Independent Quality Control”</u>	means all those planned and systematic actions necessary for the O&M Contractor to certify to the Developer that all O&M Work After Construction fully complies with the requirements of this Agreement and that all materials incorporated in the O&M Work After Construction, all equipment used, and all elements of the O&M Work After Construction will perform satisfactorily for the purpose(s) intended.
<u>“indexed”</u>	has the meaning given to it in Part 2, <u>Section 2.3.1</u> .
<u>“Indirect Losses”</u>	means any punitive, indirect, incidental or consequential damages of any nature, whether arising out of a breach of this Agreement, tort (including negligence) or other legal theory of liability.
<u>“Information”</u>	has the meaning given to it in Part 2, <u>Section 2.2.3.c</u> .
<u>“Infrastructure”</u>	means the transportation facilities and all related structures and improvements to be developed, designed, constructed and maintained pursuant to the terms of this Agreement, the Construction Contract and the Project Agreement, as more particularly described in Schedule 10 (Design and Construction Requirements) to the Project Agreement and Schedule 11 (Operations and Maintenance Requirements) to the Project Agreement.
<u>“Initial O&M Liability Cap”</u>	has the meaning given in Part 1, Article 10.1.
<u>“Initial Warning Notice”</u>	has the meaning given to it in Part 2, <u>Section 22.2.1</u> .
<u>“Insolvency Event”</u>	means, in respect of any Person, <ul style="list-style-type: none"> a. any of: <ul style="list-style-type: none"> i. the commencement of a voluntary case under Federal bankruptcy law; ii. the filing of a petition seeking to take advantage of any other law, domestic or foreign, relating to bankruptcy, insolvency, reorganization, winding up or composition for adjustment of debts; iii. the application for or the consent to the appointment of, or the taking of possession by, a receiver, custodian, trustee, or liquidator of itself or of a substantial part of its property, domestic or foreign; iv. the admission in writing of its inability to pay its debts as they become due; v. the making of a general assignment for the benefit of creditors; or vi. the taking of any corporate (or equivalent) action for the purpose of authorizing any of the foregoing; or b. the commencement of a case or other proceeding against such Person in any court of competent jurisdiction seeking: <ul style="list-style-type: none"> i. relief under Federal bankruptcy law or under any other law, domestic or foreign, relating to bankruptcy, insolvency, reorganization, winding up

or adjustment of debts; or

- ii. the appointment of a trustee, receiver, custodian, liquidator or the like for such Person or for all or any substantial part of their respective assets, domestic or foreign,

and:

- A. the petition that commenced such case or proceeding is not contested by such Person within the amount of time provided under Law; or
- B. either: (I) such case or proceeding continues without dismissal or stay for a period of 60 Calendar Days; or (II) an order granting the relief requested in such case or proceeding (including, but not limited to, an order for relief under such Federal bankruptcy law) is entered and not appealed to the extent that the order for relief is stayed.

“Insolvent” means the condition of a Person in respect of whom an Insolvency Event has occurred.

“Inspection” means the organized examination or formal evaluation of the O&M Work After Construction, including manufacturing, design, and maintenance practices, processes, and products, document control and shop drawing review, to ensure that the practices, processes, and products comply with the quality requirements contained in this Agreement.

“Inspecting Parties” has the meaning given to it in Part 2, Section 19.1.3.a and “Inspecting Party” means any one of them.

“Insurance Broker” means the O&M Contractor’s insurance broker, provided that such broker shall at all times be a reputable international insurance broker of good standing.

“Insurance Cost Decrease” means, if (a) the Actual Benchmarked Insurance Cost minus the Project Insurance Change (which, for certainty, can be less than \$0) is less than (b) the Proposal Benchmarked Insurance Cost, subject to the procedure set out in Part 2, Section 25.7, the amount determined as follows:

$$\text{“Insurance Cost Decrease”} = (\text{PBIC} - \text{ABIC}) - (\text{PIC}),$$

where:

“PBIC” is the Proposal Benchmarked Insurance Cost;

“ABIC” is the Actual Benchmarked Insurance Cost; and

“PIC” is any Project Insurance Change (which, for certainty, can be less than \$0).

“Insurance Cost Increase” means, if (a) the Actual Benchmarked Insurance Cost minus the Project Insurance Change (which, for certainty, can be less than \$0) is greater than (b) the Base Benchmarked Insurance Cost, subject to the procedure set out in Part 2, Section 25.7, the amount determined as follows:

$$\text{“Insurance Cost Increase”} = (\text{ABIC} - \text{BBIC}) - (\text{PIC}),$$

where:

“ABIC” is the Actual Benchmarked Insurance Cost;

“BBIC” is the Base Benchmarked Insurance Cost; and

“PIC” is any Project Insurance Change (which, for certainty, can be less than \$0).

“Insurance Policies”

has the meaning given to it in Part 2, Section 25.1.1.

“Insurance Renewal Date”

means the first anniversary of the Benchmarked Insurance Inception Date and, thereafter, each date falling on the anniversary of the prior Insurance Renewal Date.

“Insurance Review Period”

means:

- a. the two year period commencing on the Benchmarked Insurance Inception Date and ending on the Calendar Day immediately prior to the second Insurance Renewal Date; and
- b. each subsequent two year period commencing on each even-numbered anniversary of the Benchmarked Insurance Inception Date and ending on the Calendar Day immediately prior to the second anniversary of the first day of such two year period,

in the case of either paragraphs a. or b., except where the end of such period lies beyond the last Calendar Day of the O&M Term, in which case the relevant Insurance Review Period shall end on the last Calendar Day of the O&M Term.

“Insurance Term”

means a provision that must be included in one or more of the Insurance Policies in order for the O&M Contractor to comply with Part 2, Section 25.1.1.

“Intellectual Property”

means all current and future legal and/or equitable rights and interests in or to know-how, patents (including applications), copyrights (including moral rights), trademarks (registered and unregistered), service marks, trade secrets, designs (registered and unregistered), utility models, circuit layouts, business and internet domain names, inventions, solutions embodied in technology and other intellectual activity and applications of or for any of the foregoing subsisting in or relating to the Project or Project design data including:

- a. algorithms, software, source code and source code documentation used in connection with the Project; and

“Intelligent Transportation Systems” or “ITS”

means the information and communication technologies used to inform roadway users, collect data and collect tolls.

“Interface Agreement”

means the interface agreement dated as of the date hereof between the Developer, the Construction Contractor and the O&M Contractor.

“Interior Zone”

means the length of roadway between the Transition Zone and the Exit Zone and which has constant illumination.

“Internal Revenue Code”

means the Internal Revenue Code of 1986, and the Regulations promulgated by the U.S. Department of Treasury.

“ITP”

has the meaning given to it in the Project Agreement.

<u>“Joint Insurance Cost Report”</u>	has the meaning given to it in Part 2, <u>Section 25.7.2</u> .
<u>“Key Milestone”</u>	means each of the dates for issuance of NTP1 and NTP2, the Snow and Ice Control Commencement Date, each of the Milestone Completion Target Dates, the Baseline Substantial Completion Date, the Final Acceptance Date and each of the dates for submission of Deliverables by Developer as specified in the DRTL.
<u>“Key Personnel”</u>	means the individuals identified in <u>Schedule 27 (Key Personnel)</u> to fill the various job positions set out in that Schedule, and any replacement personnel Accepted pursuant to Part 2, <u>Section 16.1</u> .
<u>“Known or Knowable”</u>	<p>means any risk, information, matter or thing that on or prior to the Setting Date:</p> <ol style="list-style-type: none"> a. was identified, described or expressly anticipated in the Project Information or the I-70 East EIS, or in any Department Provided Approval; b. was otherwise disclosed to or known by the O&M Contractor or an O&M Contractor-Related Entity; or c. could reasonably have been known, identified, discovered, observed or anticipated by the O&M Contractor undertaking due diligence pursuant to Good Industry Practice, and taking into account (without limitation): <ol style="list-style-type: none"> i. the provisions of the ITP with respect to the conduct of due diligence; ii. the Enterprises’ approval of and response to Proposers’ diligence-related requests and comments submitted pursuant to the ITP to the extent such diligence-related request or comment was: <ol style="list-style-type: none"> A. submitted by the Preferred Proposer; or B. submitted by other Proposers and made available to the Preferred Proposer prior to the Setting Date; iii. the availability and contents of all Project Information, Department Provided Approvals, the I-70 East EIS and all other available Environmental Approvals, Governmental Approvals, and all other requirements, manuals, guidance, reports and other information referenced by: <ol style="list-style-type: none"> A. any of the Environmental Requirements; B. the Phase I environmental site assessments included in the Reference Documents; or C. this Agreement; and iv. the opportunity to review all Law.
<u>“Laboratory”</u>	means the testing laboratory of the O&M Contractor, CDOT or any other

	certified testing laboratory.
<u>“Law”</u>	<p>means:</p> <ul style="list-style-type: none"> a. any: <ul style="list-style-type: none"> i. statute, law (including common law), code, regulation, ordinance or rule; ii. binding judgment, judicial or administrative order or decree (other than one rendered pursuant to the Dispute Resolution Procedure); iii. written directive, guideline, policy requirement, methodology or other governmental restriction or requirement (including those resulting from an initiative or referendum process, but excluding those by the Enterprises within the scope of their administration of the Project Agreement); and iv. similar form of decision of or determination by, or any written interpretation or administration of any of the foregoing by, any Governmental Authority, <p>in each case that is applicable to or has an impact on the Project or the Work (where such applicability or impact shall be determined by reference to the context in which the term Law is used), whether taking effect before or after the Agreement Date, including Environmental Laws, but excluding Governmental Approvals and Permits; and</p> b. any Public Safety Order.
<u>“Lender”</u>	means any Person that provides or holds and is owed repayment of Project Debt, together with their respective successors, assigns, participating parties, trustees and agents, including any Collateral Agent.
<u>“Lenders’ Liabilities”</u>	has the meaning given to it in the Project Agreement.
<u>“Lenders’ O&M Direct Agreement”</u>	means the agreement in the form attached to Part 2 of this Agreement as Attachment B to be entered into between the Developer, the O&M Contractor and the Collateral Agent.
<u>“Level of Service”</u>	means, in relation to the O&M Work After Construction, the level of service as described in CDOT’s Maintenance Level of Service Manual.
<u>“Limited O&M Work”</u>	<p>means any and all operations, management, administration, maintenance and Routine Maintenance activities, in each case required to be carried out by the O&M Contractor to:</p> <ul style="list-style-type: none"> a. comply with all the requirements set out in <u>Schedule 11 (Operations and Maintenance Requirements)</u> (including, for certainty, the requirements set out in <u>Appendix A-2</u> thereto) associated with: <ul style="list-style-type: none"> i. Snow and Ice Control Services; ii. performance of the courtesy patrol service pursuant to <u>Section 10</u> of, and <u>Appendix B</u> to, <u>Schedule 11 (Operations and Maintenance Requirements)</u>; iii. sweeping and cleaning (including complying with

Section 1.1 and Section 17 of each of Appendix A-1 and Appendix A-2 of Schedule 11 (*Operations and Maintenance Requirements*));

- iv. Incident response;
 - v. its obligations with respect to ITS and ETC facilities as set out in Sections 2.2.6.b and 3.2.8.d. of Schedule 11 (*Operations and Maintenance Requirements*); and
 - vi. its obligations with respect to lighting as set out in Sections 2.2.8 and 3.2.11.b. of Schedule 11 (*Operations and Maintenance Requirements*), other than graffiti removal on lighting;
- b. comply with any other provisions of this Agreement applicable to the performance of all activities that fall within paragraph a. of this definition; and
 - c. without prejudice to any of its other notification or reporting obligations under this Agreement (including under Schedule 6 (*Performance Mechanism*) or Schedule 11 (*Operations and Maintenance Requirements*)), provide the Developer with notification of O&M Defects (assuming for the purposes of this paragraph c. that the definition of O&M Defects in this Part A of Annex A (*Definitions and Abbreviations*) applies to all Elements within or forming part of the Limited O&M Work Segments, regardless of whether the O&M Contractor is required to perform Limited O&M Work thereon or not) within the Limited O&M Work Segments as observed by the O&M Contractor while performing any activity that falls within paragraph a. or b. of this definition,

during the Operating Period.

“Limited O&M Work Segments”

means:

- a. the segment of the I-70 Mainline from the I-25/I-70 interchange to I-70 Brighton Boulevard interchange (including its associated infrastructure (including all roadway lanes, ramps, shoulders, and structures));
- b. the segment of the I-70 Mainline from I-70 Chambers Road interchange to I-70 Tower Road interchange (including its associated infrastructure (including all roadway lanes, ramps, shoulders, and structures)); and
- c. the structure, with number E-17-AED, on the I-70 westbound entrance ramp from Central Park Boulevard,

in the case of each of paragraphs a. to c. of this definition, to the extent within the O&M Limits.

“Local Agency”

means any local Governmental Authority other than the State or an agency thereof.

“Local Agency Roadway”

means roadways (whether owned by a Local Agency or CDOT) excluding CDOT Roadways and the I-70 Mainline.

“Local Hiring Goal”

has the meaning given to it in Section 6.3.1.b of Schedule 15 (*Federal and*

	<i>State Requirements</i>).
“ <u>Longstop Date</u> ”	has the meaning given to it in the Project Agreement.
“ <u>Loss</u> ” or “ <u>Losses</u> ”	means any loss, damage, cost, expense, charge, fee, injury, liability, obligation, judgment, penalty or fine, in each case including attorneys’, accountants’ and expert witnesses’ fees and expenses (including those incurred in connection with the enforcement of any indemnity or other provision of this Agreement), other than Indirect Losses.
“ <u>Lowered Section</u> ”	means the segment of the I-70 Mainline between Brighton Boulevard and Dahlia Street where the proposed vertical profile is modified below existing ground.
“ <u>Maintenance Management Information System</u> ”	means the system required to be established and maintained by the O&M Contractor in accordance with of <u>Section 7</u> of <u>Schedule 11</u> (<i>Operations and Maintenance Requirements</i>).
“ <u>Maintenance Management Plan</u> ” or “ <u>MMP</u> ”	means the plan referred to in <u>Section 5</u> of <u>Schedule 11</u> (<i>Operations and Maintenance Requirements</i>) that sets out how the O&M Contractor will comply with its maintenance obligations under this Agreement (as updated in accordance with <u>Schedule 11</u> (<i>Operations and Maintenance Requirements</i>)).
“ <u>Maintenance Rectification Costs</u> ”	has the meaning given to it in the Project Agreement.
“ <u>Maintenance Yard</u> ”	means the maintenance yard located within the southeast quadrant of the interchange at Havana Street and within the Existing CDOT Right-of-Way.
“ <u>Managed Lanes</u> ”	has the same meaning as Tolled Express Lanes.
“ <u>Material Litigation</u> ”	means any lawsuit filed in a court of competent jurisdiction that: <ul style="list-style-type: none"> a. seeks to overturn, set aside, enjoin, or otherwise inhibit the implementation of any Department Provided Approval based on alleged non-compliance with Law, including NEPA; or b. could result in a Termination by Court Ruling of the Project Agreement.
“ <u>Materials Management Plan</u> ”	means the “MMP” prepared by the O&M Contractor in accordance with <u>Section 23.8</u> of <u>Schedule 17</u> (<i>Environmental Requirements</i>).
“ <u>Measurement Criteria</u> ”	means, in respect of an Element, the measurement criteria applicable to such Element specified in the “Measurement Criteria” column in the Performance and Measurement Tables (as updated in accordance with <u>Schedule 11</u> (<i>Operations and Maintenance Requirements</i>)).
“ <u>Microwave Vehicle Radar Detection</u> ”	means a side fire radar used to collect point data of volume, occupancy, speed and classification on each lane of travel.
“ <u>Mile High Courtesy Patrol</u> ”	is the courtesy patrol program operated by CDOT.
“ <u>Milestone 1</u> ”	means the Construction Work between Sand Creek Bridge and Chambers Road (Station 2192+00 to 2448+00) comprising the addition of one Tolle Express Lane in each direction within the limits.
“ <u>Milestone 2</u> ”	means the Construction Work between Dahlia Street and Sand Creek Bridge (Station 2091+00 to 2192+00) comprising the addition of one Tolle Express Lane in each direction within the limits.

<u>“Milestone 3”</u>	means the Construction Work between Brighton Blvd and Dahlia Street (Station 2000+00 to 2091+00) comprising westbound I-70 and 46th Avenue/Stapleton Drive (north of I-70), and the UPRR Crossing.
<u>“Milestone 4”</u>	means the Construction Work between Brighton Blvd and Dahlia Street (Station 2000+00 to 2091+00) comprising eastbound I-70 and 46th Avenue/Stapleton Drive (south of I-70).
<u>“Milestone Completion”</u>	means the satisfaction of all Milestone Completion Conditions, as confirmed by the Enterprises’ issuance of the Milestone Completion Certificate.
<u>“Milestone Completion Certificate”</u>	has the meaning given to it in the Project Agreement.
<u>“Milestone Completion Conditions”</u>	has the meaning given to it in the Project Agreement.
<u>“Milestone Completion Date”</u>	has the meaning given to it in the Project Agreement.
<u>“Milestone Completion Target Date”</u>	has the meaning given to it in the Project Agreement.
<u>“Milestone Payment”</u>	has the meaning given to it in the Project Agreement.
<u>“month”</u>	means a month as determined by reference to the time and date in Denver, Colorado.
<u>“Monthly Construction Closure Deduction”</u>	means, for any month, an amount equal to the sum of the Construction Closure Deductions that accrued during such month, calculated in accordance with <u>Section 3</u> of <u>Part 1</u> of <u>Schedule 6</u> (<i>Performance Mechanism</i>).
<u>“Monthly Deductions Report”</u>	means a report submitted by Developer to the Enterprises pursuant to <u>Section 3.1</u> of <u>Part 2</u> of <u>Schedule 4</u> (<i>Payments</i>).
<u>“Monthly Noncompliance Deduction”</u>	means, for any month, an amount equal to the sum of the deductions that accrued during such month in respect of O&M Noncompliance Events, calculated in accordance with, as applicable, <u>Section 2</u> of <u>Part 1</u> of <u>Schedule 6</u> (<i>Performance Mechanism</i>) or <u>Section 2</u> of <u>Part 3</u> of <u>Schedule 6</u> (<i>Performance Mechanism</i>).
<u>“Monthly O&M Report”</u>	has the meaning given to it in <u>Section 13.1</u> of <u>Schedule 11</u> (<i>Operations and Maintenance Requirements</i>).
<u>“Monthly Operating Period Closure Deduction”</u>	means, for any month, an amount equal to the sum of the Operating Period Closure Deductions that accrued during such month, calculated in accordance with <u>Section 3</u> of <u>Part 3</u> of <u>Schedule 6</u> (<i>Performance Mechanism</i>).
<u>“Monthly Performance Deduction”</u>	means, for any month, an amount equal to the aggregate of the Monthly Noncompliance Deduction and the Monthly Operating Period Closure Deduction, in each case, for such month.
<u>“MOT Task Force”</u>	means a team established by the O&M Work pursuant to <u>Section 2.2.6</u> of <u>Schedule 10</u> (<i>Design and Construction Requirements</i>) to the Project Agreement to assume proper coordination with Governmental Authorities affected by the O&M Work After Construction, in relation to maintenance of traffic.
<u>“MOT Variance”</u>	means a variance to the requirements applicable to Closures, detours and any other restrictions set out in <u>Section 2</u> (<i>Maintenance of Traffic</i>) of

Schedule 10 to the Project Agreement, as Approved by the Developer, Approved by the Enterprises or approved by the relevant Local Agency, as applicable, in accordance with Section 2.3 of Schedule 10 (*Design and Construction Requirements*) to the Project Agreement.

“NEPA”

has the meaning given to it in the Project Agreement.

“New Environmental Approvals”

means any of the following:

- a. a new Environmental Approval; and
- b. a modification, renewal or extension of an existing Environmental Approval.

“No Better and No Worse”

shall be interpreted pursuant to Section 28.2 of the Project Agreement.

“No Conflict Form”

means a form set out in Appendix A to Section 4 of Schedule 10 to the Project Agreement.

“No-deductible Event”

means any Compensation Event described in paragraphs a., b.i., b.ii., b.iii., d., e., i.i., l. or o. of the definition thereof in this Part A of Annex A (*Definitions and Abbreviations*).

“Noncompliance and Closure Database”

means the database described in Section 2 of Part 6 of Schedule 6 (*Performance Mechanism*).

“Noncompliance Cure Period”

means:

- a. for any O&M Noncompliance Event for which the Cure Period is specified in days, each continuous period of “x” days commencing from and including:
 - i. if such O&M Noncompliance Event does not have a Grace Period, the Noncompliance Start Time of such O&M Noncompliance Event; or
 - ii. if such O&M Noncompliance Event has a Grace Period, the expiry of such Grace Period,

in the case of i. and ii., to and excluding the Noncompliance Rectification Time of such O&M Noncompliance Event, where “x” equals the number of days specified as the Cure Period for such O&M Noncompliance Event; and
- b. for any O&M Noncompliance Event for which the Cure Period is specified in hours or months, each continuous period of “x” hours or months, respectively, commencing from and including the Noncompliance Start Time of such O&M Noncompliance Event to and excluding the Noncompliance Rectification Time of such O&M Noncompliance Event, where “x” equals the number of hours or months, as applicable, specified as the Cure Period for such O&M Noncompliance Event,

provided that, for certainty, the Noncompliance Cure Period during which the Noncompliance Rectification Time occurs in respect of the relevant O&M Noncompliance Event will have a duration of less than “x” days, hours or months, as applicable, and any reference in Schedule 6 (*Performance Mechanism*) to a “partial” Noncompliance Cure Period shall be deemed to refer to such Noncompliance Cure Period for the relevant O&M Noncompliance Event.

<u>“Noncompliance Default Event”</u>	<p>means the occurrence of any of the following:</p> <ul style="list-style-type: none"> a. during the Operating Period, the cumulative number of O&M Noncompliance Points accrued during: <ul style="list-style-type: none"> i. any rolling 12 month period equals or exceeds 150; or ii. any rolling 36 month period equals or exceeds 300; <p>provided that, for certainty, any O&M Noncompliance Point that is being disputed in good faith by the O&M Contractor shall be disregarded for purposes of determining whether the Noncompliance Default Event has occurred until such time as it has been Agreed or Determined that the relevant O&M Noncompliance Point was validly assigned.</p>
<u>“Noncompliance Rectification Time”</u>	means, in respect of any O&M Noncompliance Event which has a Cure Period, the date and time that the O&M Noncompliance Event is fully cured.
<u>“Noncompliance Start Time”</u>	means, for any O&M Noncompliance Event, whether or not such O&M Noncompliance Event has a Cure Period, the date and time that the O&M Noncompliance Event occurs, provided that, for certainty, for any O&M Noncompliance Event that is a failure to remedy a Category 1 Defect or a Category 2 Defect within the Defect Remedy Period, the Noncompliance Start Time shall be the date and time that the applicable Defect Remedy Period expires.
<u>“Nonconforming Work”</u>	means O&M Work After Construction performed by the O&M Contractor that does not meet the requirements of this Agreement.
<u>“Nonconforming Work Change”</u>	has the meaning given to it in <u>Section 2.1.b.ii</u> of <u>Schedule 24 (Change Procedure)</u> .
<u>“Nonconforming Work Remedy”</u>	means action taken by the O&M Contractor to ensure that any Nonconforming Work meets the requirements of this Agreement.
<u>“Non-Appendix B Parcel Unexpected Hazardous Substances Event”</u>	<p>the encountering or discovery of collectively all Unexpected Hazardous Substances on, in or under:</p> <ul style="list-style-type: none"> a. an individual ROW Parcel that is not an Appendix B Parcel; or b. a Permit Area (excluding any Developer-risk Permit Area).
<u>“Non-Permitted Closures”</u>	means, during the Operating Period, any Non-Permitted Operating Period Closure.
<u>“Non-Permitted Operating Period Closure”</u>	<p>means a Closure that occurs during the Operating Period in an O&M Segment:</p> <ul style="list-style-type: none"> a. that: <ul style="list-style-type: none"> i. is not a Permitted Operating Period Closure; and ii. is not an Excused Closure; or b. is deemed to be a Non-Permitted Operating Period Closure pursuant to <u>Section 2.11.14.d</u> of <u>Schedule 10 (Design and Construction Requirements)</u> to the Project Agreement, <p>provided that, if any Closure that occurs during the Operating Period is not a Non-Permitted Operating Period Closure when it starts, but during such Closure circumstances commence to apply that would have resulted in such Closure being a Non-Permitted Operating Period Closure if such</p>

circumstances had applied to such Closure when it started, then the portion of such Closure that continues while such circumstances apply shall be deemed to be a Non-Permitted Operating Period Closure (and such deemed Non-Permitted Operating Period Closure shall be deemed to start when such circumstances commence to apply and to end when they cease to apply).

“ <u>notice</u> ” (or “ <u>Notice</u> ”)	has the meaning given to it in Part 2, <u>Section 49.1.1</u> .
“ <u>Notice of Possession</u> ”	has the meaning given to it in the Project Agreement.
“ <u>NTP1</u> ”	has the meaning given to it in the Project Agreement.
“ <u>NTP1 Conditions</u> ”	has the meaning given to it in the Project Agreement.
“ <u>NTP2</u> ”	has the meaning given to it in the Project Agreement.
“ <u>NTP2 Conditions</u> ”	has the meaning given to it in the Project Agreement.
“ <u>NTP3</u> ”	has the meaning given to it in the Project Agreement.
“ <u>NTP3 Conditions</u> ”	has the meaning given to it in the Project Agreement.
“ <u>Offsite Outfall System</u> ”	means the drainage system to be constructed pursuant to <u>Section 8.4.9.a</u> of <u>Schedule 10</u> (<i>Design and Construction Requirements</i>) to the Project Agreement conveying flows generated from outside the Site and capturing the flow preventing it from draining into the Lowered Section, that will be located to the south of I-70 Mainline and consists of ponds and large Storm Drains, routed through Globeville Park and with a discharge into the South Platte River.
“ <u>Onsite Outfall System</u> ”	means the drainage system to be constructed pursuant to <u>Section 8.4.9.b</u> of <u>Schedule 10</u> (<i>Design and Construction Requirements</i>) to the Project Agreement conveying flows generated from the onsite roadway area located within the Lowered Section to the north, with a discharge into the South Platte River.
“ <u>O&M Activities</u> ”	means all of the Routine Maintenance required to be performed by the O&M Contractor during the Operating Period pursuant to Section 3 of Schedule 11 (Operation and Maintenance Requirements) and the performance and observance of all of the O&M Contractors’ other obligations under this Agreement and the O&M Project Documents.
“ <u>O&M Change Order</u> ”	has the meaning given to it in Section 1.2.f of Schedule 24 (<i>Change Procedure</i>).
“ <u>O&M Contract</u> ”	means this Agreement, as amended, restated or otherwise modified from time to time.
“ <u>O&M Contract Amendment</u> ”	means an amendment to this Agreement to become effective on the Financial Close Date, which shall reflect any adjustments or amendments to the definitions of “Baseline Substantial Completion Target Date” and “Milestone Completion Target Date” in <u>Part A</u> of <u>Annex A</u> (<i>Definitions and Abbreviations</i>) consistent with the adjustments to the corresponding definitions in <u>Part A</u> of <u>Annex A</u> to the Project Agreement set forth in the Project Agreement Amendment.
“ <u>O&M Contractor</u> ”	has the meaning given in the preamble to Part 1.
“ <u>O&M Contractor Agreements</u> ”	has the meaning given to it in <u>Part A</u> of <u>Schedule 2</u> (<i>Representations and Warranties</i>).

<u>“O&M Contractor Change”</u>	means a Change initiated by the O&M Contractor pursuant to an O&M Contractor Change Notice.
<u>“O&M Contractor Change Notice”</u>	has the meaning given to it in Part 2, <u>Section 14.1.2</u> .
<u>“O&M Contractor Default”</u>	has the meaning given to it in Part 2, <u>Section 32.1.1</u> .
<u>“O&M Contractor Employee Redundancy Payments”</u>	means the amount of all payments of wages earned, accrued unused vacation time, and any other payments required by Law or required by the O&M Contractor’s employment agreement with the O&M Contractor’s employees, which in each case have been or will be reasonably incurred by the O&M Contractor as a direct result of termination of this Agreement.
<u>“O&M Contractor-Related Entities”</u>	means: <ul style="list-style-type: none"> a. the O&M Contractor; b. Subcontractors (of any tier); c. any other Persons (except, for certainty, the Developer or the Enterprises) performing any of the O&M Work After Construction for or on behalf of the O&M Contractor; d. any other Persons (except, for certainty, the Developer, the Enterprises and any members of the general public that use or access the Project) for whom the O&M Contractor may be legally or contractually responsible; and e. the employees, agents, officers, directors, representatives and consultants of any of the foregoing.
<u>“O&M Contractor Release of Hazardous Substances”</u>	means any Release of Hazardous Substances on, in, under, from or in the vicinity of the Site caused by the O&M Contractor or any other O&M Contractor-Related Entity to the extent such Release: <ul style="list-style-type: none"> a. arises as a result of any breach of Law, Governmental Approval, Permit or this Agreement, fraud, willful misconduct, criminal conduct, recklessness, bad faith or negligence by or of the O&M Contractor or any other O&M Contractor-Related Entity; or b. constitutes the Release of Hazardous Substances arranged to be brought onto the Site by the O&M Contractor or any other O&M Contractor-Related Entity.
<u>“O&M Contractor-risk Permit Area”</u>	means any Permit Area: <ul style="list-style-type: none"> a. which is adjacent to the Additional Right-of-Way but not the Right-of-Way; and/or b. for which access and/or use is required to be procured by the O&M Contractor pursuant to a Permit for which the O&M Contractor bears all risk of delay and/or all risk of cost pursuant to Part 2, <u>Section 8.4.3.b</u>.
<u>“O&M Contractor’s Change Response”</u>	has the meaning given to it in <u>Section 1.1.c.i</u> of <u>Schedule 24</u> (<i>Change Procedure</i>).
<u>“O&M Contractor’s Representative”</u>	has the meaning given to it in <u>Section 18.2.1.a</u> .
<u>“O&M Defect”</u>	means:

- a. any Defect in an Element or any part of an Element;
- b. any failure of an Element or any part of an Element to comply with the applicable General Requirement or any other requirement set out in this Agreement, in any such case as a result of the O&M Contractor's failure to perform any of its obligations under Schedule 11 (*Operations and Maintenance Requirements*); and
- c. any failure of an Element or any part of an Element to meet or exceed the Target for the applicable Measurement Criteria, in any such case as a result of the O&M Contractor's failure to perform any of its obligations under Schedule 11 (*Operations and Maintenance Requirements*).

<u>"O&M Fee"</u>	means an amount equal to the Base O&M Fee minus any Performance Payment Deductions as set forth in Part 3 of Schedule 6 to this Agreement.
<u>"O&M Insurance Policies"</u>	has the meaning given to it in Part 2, <u>Section 25.1.1</u> .
<u>"O&M Limits"</u>	means: <ol style="list-style-type: none"> a. Intentionally Omitted; and b. after the Substantial Completion Date, the O&M Limits After Construction.
<u>"O&M Limits After Construction"</u>	means the limits specified in the drawings referred to in <u>Section 3.1</u> of <u>Schedule 11</u> (<i>Operations and Maintenance Requirements</i>), as Accepted by the Developer (as updated in accordance with <u>Schedule 11</u> (<i>Operations and Maintenance Requirements</i>)).
<u>"O&M Limits Reference Drawings"</u>	means the drawings provided as Reference Documents and listed in document number 29.11.01 of <u>Schedule 29</u> (<i>Reference Documents</i>) to the Project Agreement.
<u>"O&M Mobilization Fee"</u>	has the meaning given in Part 1, <u>Article 12.1</u> .
<u>"O&M Noncompliance Event"</u>	means any breach or failure to meet the minimum performance requirements set forth in <u>Table 6A.1</u> and <u>Table 6A.2</u> to the Agreement, each of which is a Noncompliance Event in accordance with the Project Agreement.
<u>"O&M Noncompliance Points"</u>	means the points that may be assessed for the O&M Noncompliance Events, as set forth in <u>Table 6A.1</u> and <u>Table 6A.2</u> .
<u>"O&M Payment Application"</u>	has the meaning given in Section 2.2 of Part 2 of <u>Schedule 4</u> (<i>Payments</i>).
<u>"O&M Project Documents"</u>	means: <ol style="list-style-type: none"> a. this Agreement; b. the Interface Agreement; c. the Lenders' O&M Direct Agreement; d. the Enterprises' O&M Direct Agreement; and e. each Contractor Bond provided pursuant to Part 2, <u>Section 9.3</u>.
<u>"O&M Quality Management Plan"</u>	means the plan described in <u>Section 5.4</u> of <u>Schedule 11</u> (<i>Operations and Maintenance Requirements</i>) (as updated in accordance with <u>Schedule 11</u>

(Operations and Maintenance Requirements)).

“O&M Safety Plan” means the plan described in Section 5.3 of Schedule 11 (Operations and Maintenance Requirements), (as updated in accordance with Schedule 11 (Operations and Maintenance Requirements)).

“O&M Segment” means any one of the following segments of the Project within the Site along I-70 Mainline including I-70 Mainline and associated ramps, cross streets, CDOT Roadways and Local Agency Roadways:

O&M Segment	Start	End
1	274.000 (I-25 Interchange)	276.572 (Colorado Blvd)
2	276.572 (Colorado Blvd.)	278.548 (Quebec St.)
3	278.548 (Quebec St.)	282.563 (I-225)
4	282.563 (I-225)	285.727 (Tower Road)

“O&M Standards” means:

- a. any standards and specifications expressly referenced in this Agreement (including in Section 1.1.5 of Schedule 11 (Operations and Maintenance Requirements)) as applicable to the O&M Work After Construction (excluding, for certainty, any Laws, Governmental Approvals or Permits); and
- b. any standards and specifications that apply to the O&M Work After Construction (excluding, for certainty, any Laws, Governmental Approvals or Permits), including as a result of the O&M Contractor’s methods of performing the O&M Work After Construction,

in each case in the form published or otherwise in effect as of the Final Project Information Date (subject to change, addition or replacement pursuant to Part 2, Section 8.6).

“O&M Subcontractor” means any Person, other than Developer, who enters into a Subcontract with the O&M Contractor.

“O&M Term” has the meaning given in Part 2, Section 4.1.

“O&M Termination Compensation Estimate” has the meaning given to it in Part 2, Section 33.1.2.d.

“O&M Termination Date” means the earlier of (a) the effective date of any termination of this Agreement in accordance with the provisions set forth in Part 2, Section 33, and (b) subject to extension in accordance with Part 2, Section 4.2, the 10th anniversary of the Substantial Completion Date.

“O&M Work” has the meaning given to it in the Project Agreement.

“O&M Work After Construction” means any and all O&M Work required to be performed by the O&M Contractor during the Operating Period pursuant to Section 3 and other provisions of Schedule 11 (Operations and Maintenance Requirements).

“O&M Work During Construction” has the meaning given to it in the Project Agreement.

“O&M Work During Construction Subcontract” means the contract between the Construction Contractor and the O&M Work During Construction Subcontractor for the O&M Work During Construction, as such contract is amended, supplemented or replaced from time to time in

	accordance with its terms.
<u>“O&M Work During Construction Subcontractor”</u>	means Roy Jorgensen Associates, Inc., in its capacity as a subcontractor to the Construction Contractor for the performance of the O&M Work During Construction, and not in its capacity as the O&M Contractor hereunder.
<u>“OP Deduction Month”</u>	has the meaning given to it in <u>Section 3.2</u> of <u>Part 2</u> of <u>Schedule 4 (Payments)</u> .
<u>“Operations Goal Deduction”</u>	means the amount calculated in accordance with <u>Section 1(d)</u> of <u>Part 2</u> of <u>Schedule 6 (Performance Mechanism)</u> .
<u>“Operating Period”</u>	means the period that begins on the Calendar Day after the Substantial Completion Date and ends on the earlier of the Expiry Date and the Project Agreement Termination Date.
<u>“Operating Period Closure Deduction”</u>	means, in respect of each full or partial Closure Deduction Period that commences in respect of any Non-Permitted Operating Period Closure: <ul style="list-style-type: none"> a. if such Closure Deduction Period commences on a Calendar Day that is not during a Weekend and is not a Holiday, the amount set out in the Operating Period Closure Deductions Table for the type of Closure that caused such Non-Permitted Operating Period Closure; b. if such Closure Deduction Period commences on a Calendar Day that is during a Weekend, 50% of the amount set out in the Operating Period Closure Deductions Table for the type of Closure that caused such Non-Permitted Operating Period Closure; or c. if such Closure Deduction Period commences on a Calendar Day that is a Holiday, 150% of the amount set out in the Operating Period Closure Deductions Table for the type of Closure that caused such Non-Permitted Operating Period Closure, subject, in the case of paragraphs <u>a.</u> , <u>b.</u> and <u>c.</u> , to the provisions of <u>Section 2</u> of <u>Part 5</u> of <u>Schedule 6 (Performance Mechanism)</u> .
<u>“Operating Period Closure Deductions Table”</u>	means the table set out in <u>Section 3.2</u> of <u>Part 3</u> of <u>Schedule 6 (Performance Mechanism)</u> (subject to amendment pursuant to <u>Section 3.3</u> of <u>Part 3</u> of <u>Schedule 6 (Performance Mechanism)</u>).
<u>“Operating Period Small Business Goals”</u>	has the meaning given to it in <u>Section 6.2.2.a</u> of <u>Schedule 15 (Federal and State Requirements)</u> .
<u>“Operations Management Plan (OMP)”</u>	means the plan referred to in <u>Section 9</u> of <u>Schedule 11 (Operations and Maintenance Requirements)</u> that sets out how the O&M Contractor will comply with its operations obligations under this Agreement (as updated in accordance with <u>Schedule 11 (Operations and Maintenance Requirements)</u>).
<u>“Organizational Conflict of Interest”</u>	means an organizational conflict of interest as described in 2 C.C.R. 601-15 Sec. 7 or as defined under 23 CFR § 636.116, where for purposes of 23 CFR § 636.116: <ul style="list-style-type: none"> a. the “person” referred to in that definition was a Core Proposer Team Member or a contractor, subcontractor, advisor, consultant or subconsultant to the Preferred Proposer or any Core Proposer Team Member; and

	<ul style="list-style-type: none"> b. the “owner” referred to in that definition is each Enterprise and CDOT.
“ <u>Other Construction Work</u> ”	has the meaning given to it <u>Section 2.a</u> of <u>Part II</u> of <u>Appendix A</u> to <u>Schedule 15</u> (<i>Federal and State Requirements</i>).
“ <u>Other Department Project</u> ”	means any Related Transportation Facility that is: <ul style="list-style-type: none"> a. constructed and operated and/or maintained by or on behalf of the Enterprises and/or CDOT (other than by the Developer to the extent such project is not a Developer Retained Expansion) during the Term; and b. not otherwise incorporated in the Project under the terms of this Agreement.
“ <u>Other Department Project Procurement Material</u> ”	means any design brief, specification, information memorandum, request for qualification, request for proposal, contract or other documentation issued or otherwise made available by the Enterprises and/or CDOT in connection with the tender or procurement of any Other Department Project.
“ <u>PA Change Order</u> ”	has the meaning given to it in Section 1.2.e of Schedule 24 (<i>Change Procedure</i>).
“ <u>PA Noncompliance Event</u> ”	means any “Noncompliance Event” as defined in the Project Agreement.
“ <u>PA Noncompliance Points</u> ”	means any “Noncompliance Points” as defined in the Project Agreement.
“ <u>Part 1</u> ”	has the meaning given in Part 1, Article 2.1.1.
“ <u>Part 2</u> ”	has the meaning given in Part 1, Article 2.1.2.
“ <u>Parties</u> ”	means, collectively, the Developer and the O&M Contractor, and “ <u>Party</u> ” means either the Developer or the O&M Contractor.
“ <u>Pay-if-Paid Provisions</u> ”	has the meaning given in Part 1, Article 12.6.
“ <u>Payment Milestone</u> ”	means any of Milestone 1, Milestone 2, Milestone 3 or Milestone 4.
“ <u>Payment Month</u> ”	means the month during which the Substantial Completion Date occurs and each month thereafter during the O&M Term.
“ <u>Performance and Measurement Tables</u> ”	means the performance and measurement tables set out in <u>Appendix A-2</u> to <u>Schedule 11</u> (<i>Operations and Maintenance Requirements</i>) for the Operating Period (as the same may be updated from time to time in accordance with <u>Schedule 11</u> (<i>Operations and Maintenance Requirements</i>)).
“ <u>Performance Payment</u> ”	has the meaning given to it in the Project Agreement.
“ <u>Performance Requirements</u> ”	means the requirements set out in the column headed “Performance Requirements” in the Performance and Measurement Tables.
“ <u>Permission to Enter Property Form</u> ”	means CDOT Form 730 “Permission to Enter Property”.
“ <u>Permit Area</u> ”	means any area adjacent to any ROW Parcel or any Additional ROW Parcel for which access and/or use is required to be procured by Developer pursuant to a Permit in order to perform the Work.
“ <u>Permits</u> ”	means any permit, license, temporary crossing agreement or right-of-entry agreement issued, granted or entered into by or with any Governmental Authority, Utility Owner or Railroad in connection with the performance of

any of the O&M Contractor's obligations under this Agreement.

"Permitted Operating Period Closure"

means any Closure which occurs during the Operating Period and is required for the purposes of the O&M Contractor performing O&M Work After Construction in compliance with the most recently Accepted Maintenance Management Plan that:

- a. does not result in a breach of any of, and is permitted by, Sections 2.5.3, 2.6, 2.7, 2.9, 2.11.5, 2.11.9, 2.11.10, 2.11.11, 2.11.12 or 2.11.19 of Schedule 10 (Design and Construction Requirements) to the Project Agreement, as if the provisions of such Sections applied to the performance of O&M Work After Construction, as applicable, during the Operating Period (and, for certainty, any Closure that is permitted by Section 2.11.6 of Schedule 10 (Design and Construction Requirements) to the Project Agreement during the Construction Period shall not constitute a Permitted Operating Period Closure); or
- b. if such Closure does not satisfy the requirement set out in the first sentence of paragraph a. of this definition, has been Approved by the Developer or Approved by the Department or approved by the relevant Local Agency, as applicable, as a MOT Variance.

"Persistent Developer Breach"

has the meaning given to "Persistent Breach" in the Project Agreement.

"Persistent O&M Contractor Breach"

has the meaning given to it in Part 2, Section 22.2.2.e.

"Person"

means any of a natural person, a corporation, a limited liability company, a trust, a partnership, a limited liability partnership, a joint stock company, a consortium, a joint venture, an unincorporated association or any other entity recognized as having legal personality under the laws of the State, in each case as the context may require.

"Point of Slope Selection"

means the location at which the roadside slope adjacent to the pavement ends, and the cut, or fill slope begins.

"Portal"

means the face of the Cover where the Threshold Zone begins.

"Possession"

means, in relation to any ROW Parcel or any Additional ROW Parcel, the right to access and use such ROW Parcel or Additional ROW Parcel in accordance with the terms of this Agreement, subject to:

- a. rights, including statutory or public franchise rights, of Governmental Authorities, Utility Owners, Railroads and third parties, including:
 - i. as contemplated by the Third Party Agreements; and
 - ii. as such access and use may be permitted and regulated by CDOT including through the issuance of Access Permits;
- b. rights, including rights of access, granted to the Enterprises and CDOT and each of their employees, agents, consultants and subcontractors and to other Persons under this Agreement;

- c. restrictions on access and/or use applicable to any such ROW Parcel or any such Additional ROW Parcel set out in:
 - i. easement deeds, right of entry permits and/or any Governmental Approval or Permit;
 - ii. any title commitments or American Land Title Association maps related to the Right-of-Way as set out in the Reference Documents; or
 - iii. the Beneficial Reuse and Materials Management Plan or the Materials Management Plan, and in either case later recorded;
- d. any other easements, zoning restrictions, regulations, rights of way and similar restrictions on real property imposed by Law, any Governmental Approval or Permit;
- e. any other restrictions or qualifications set out in Schedule 18 (Right-of-Way), including the establishment of hold off zones pursuant to Section 5.1 thereof; or
- f. any other express restrictions or qualifications set out in this Agreement.

<u>"Possession Date"</u>	has the meaning given to it in the definition of Notice of Possession in this Part A of <u>Annex A (Definitions and Abbreviations)</u> .
<u>"Precipitation Event"</u>	means any type of event or occurrence causing slippery road conditions including snow, drifting snow, freezing rain, sleet, ice and frost.
<u>"Preferred Alternative"</u>	means the alternative identified as the "Preferred Alternative" pursuant to NEPA in the FEIS related to the Project.
<u>"Preferred Proposer"</u>	has the meaning given to it in the Project Agreement.
<u>"Preliminary Supervening Event Submission"</u>	has the meaning given to it in Part 2, <u>Section 15.1.2.b.i.</u>
<u>"Prime Rate"</u>	means the prime rate as published in <u>The Wall Street Journal</u> (Western Edition), or a mutually agreeable alternative source of the prime rate if it is no longer published in <u>The Wall Street Journal</u> (Western Edition) or the method of computation thereof is substantially modified.
<u>"Principal Indemnified Parties"</u>	means each Enterprise, CDOT and the State.
<u>"Private Utility"</u>	means a Utility that is owned by a Private Utility Owner.
<u>"Private Utility Owner"</u>	means each of: <ul style="list-style-type: none"> a. AT&T Corp.; b. Comcast Holdings Corporation; c. Level 3 Communications, Inc.; d. MCI Communications Services, Inc. d/b/a Verizon Business Services; e. NuStar Logistics, L.P.; f. Phillips 66 Company; g. Public Service Company of Colorado;

- h. Qwest Corporation d/b/a CenturyLink QC;
- i. Sprint; and
- j. Zayo Group, LLC,

or any Affiliate of the same with which the CDOT enters into a URA.

"Process Control"

means the activities performed by or on behalf of the O&M Contractor to ensure and document that a product meets the requirements of this Agreement, which activities may include checking, materials handling and construction procedures, calibrations and maintenance of equipment, shop drawing review, document control, production process control, and any sampling, testing, and inspection done for such purposes.

"Programmatic Agreement"

means the Programmatic Agreement Among Federal Highway Administration, Colorado State Historic Preservation Officer, and Colorado Department of Transportation Regarding Implementation of The Interstate 70 East Corridor Project - Interstate 25 to Tower Road.

"Prohibited Act"

means:

- a. an act committed in contravention of Part 2, Section 8.3.2;
- b. offering, giving or agreeing to give to any Governmental Authority (including either Enterprise or CDOT) or any public official, civil servant, officer, director, agent or employee of any such Governmental Authority, any bribe, gift or consideration of any kind as an inducement, commission or reward:
 - i. for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement or the Project Agreement or any other related contract with either Enterprise or the Federal government or the State, or any other Governmental Authority (including CDOT);
 - ii. for showing or not showing favor or disfavor to any Person in relation to this Agreement or the Project Agreement or any other related contract with either Enterprise or the Federal government or the State, or any other Governmental Authority (including CDOT); or
- c. defrauding or attempting to defraud or conspiring to defraud either Enterprise or the Federal government or the State, or any division, subdivision or agency of either of them (including CDOT),

in each case regardless of whether or not it is a criminal offence pursuant to Law.

"Project"

has the meaning given in Recital A of Part 1.

"Project Agreement"

has the meaning given in Recital A of Part 1.

"Project Agreement Amendment"

means an amendment to the Project Agreement to become effective on the Financial Close Date, which shall reflect any adjustments or amendments that have been accepted or agreed, as applicable, by the Enterprises and Developer pursuant to Annex A to Schedule 1 (*Financial Close*) to the

Project Agreement, including amendments to the definitions of “Baseline Substantial Completion Target Date” and “Milestone Completion Target Date” in Part A of Annex A (*Definitions and Abbreviations*) to the Project Agreement in each case to reflect, on a day for day basis, any delay in achieving Financial Close relative to November 30, 2017 (the date assumed in the ITP).

“Project Agreement Claim”

has the meaning given to the term “Claim” in the Project Agreement.

“Project Agreement Developer Default”

has the meaning given to the term “Developer Default” in the Project Agreement.

“Project Agreement Dispute”

means a dispute between the Enterprises and the Developer, arising out of the Project Agreement.

“Project Agreement Dispute Resolution Procedure”

means the procedures for resolving Disputes set forth in Schedule 25 (*Dispute Resolution Procedure*) to the Project Agreement.

“Project Agreement Requested Dispute”

means a Dispute resolved according to the Requested Dispute Procedures set forth in Section 4 of Schedule 25 (*Dispute Resolution Procedure*).

“Project Agreement Termination Date”

has the meaning given to the term “Termination Date” in the Project Agreement.

“Project Debt”

has the meaning given to it in the Project Agreement.

“Project Information”

has the meaning given to it in Part 2, Section 3.1.a.

“Project Insurance Change”

means any net increase or net decrease in the Actual Benchmarked Insurance Cost relative to the Proposal Insurance Cost (including any such increase or decrease resulting from a change in the amount of any deductible or resulting from Developer’s claims history in relation to the Project), excluding only any increase or decrease:

- a. arising from:
 - i. any unavoidable circumstances generally prevailing in the Relevant Insurance Markets; and
 - ii. any claims history in relation to the Project resulting from the acts or omissions of the Developer, the Enterprises and/or CDOT; or
- b. taken into account in any calculation of Change in Costs made pursuant to this Agreement,

with the amount of any such net increase or net decrease to be expressed as a positive number in the event of a net increase and a negative number in the event of a net decrease.

<u>“Project Intellectual Property”</u>	means Intellectual Property created, used, applied or reduced to practice by the O&M Contractor or any other O&M Contractor-Related Entity in connection with the Project or the O&M Work After Construction, but excluding that which is: <ul style="list-style-type: none"> a. owned by the Enterprises, CDOT, the Developer or otherwise made available to the O&M Contractor by the Developer pursuant to this Agreement and as a result of its performance of the O&M Work After Construction; or b. owned by any Person other than the Developer, the Enterprises, CDOT or a O&M Contractor -Related Entity.
<u>“Project License”</u>	has the meaning given to it in Part 2, <u>Section 7.2.1.a.</u>
<u>“Project License End Date”</u>	means, for each ROW Parcel and each Additional ROW Parcel, the earliest of: <ul style="list-style-type: none"> a. the date on which the Project License is revoked pursuant to Part 2, <u>Section 7.2.1.c;</u> b. the Substantial Completion Date with respect to any ROW Parcels and any Additional ROW Parcels (or any portion of any thereof) that are outside the O&M Limits After Construction; c. with respect to any such ROW Parcel and any Additional ROW Parcel that is provided in the form of a Temporary ROW Easement, the date specified in or required by the terms of such easement; and d. with respect to any ROW Parcel on which the Maintenance Yard is located, the effective date of any termination of the Project License with respect thereto pursuant to Part 2, <u>Section 7.2.1.d.</u>
<u>“Project License Start Date”</u>	has the meaning given to it in the Project Agreement.
<u>“Project Life O&M Fee”</u>	means the fee due to the Developer for the performance of O&M Work under the Project Agreement, as set forth in the Financial Model.
<u>“Project Records”</u>	has the meaning given to it in Part 2, <u>Section 19.1.1.</u>
<u>“Project Special Provisions”</u>	means the Project Special Provisions set out in <u>Appendix A</u> to any Section of <u>Schedule 10 (Design and Construction Requirements)</u> to the Project Agreement.
<u>“Project Standards”</u>	means: <ul style="list-style-type: none"> a. Intentionally Omitted; and b. the O&M Standards.
<u>“Project Third Parties”</u>	means each counterparty (excluding the Developer, the Enterprises, CDOT and the O&M Contractor) to a Third Party Agreement.
<u>“Property Management”</u>	has the meaning given to it in <u>Section 2.1.1</u> of <u>Schedule 18 (Right-of-Way).</u>
<u>“Proposal”</u>	has the meaning given to it in the Project Agreement.
<u>“Proposal Benchmarked Insurance Cost”</u>	means, in respect of any Insurance Review Period: <ul style="list-style-type: none"> a. the Proposal Insurance Cost with respect to the applicable

	Insurance Review Period; <i>minus</i>
	b. the Base Benchmarked Insurance Deduction in respect of the applicable Insurance Review Period.
<u>“Proposal Insurance Cost”</u>	means, in respect of any Insurance Review Period: <ol style="list-style-type: none"> a. \$921,689, indexed annually from July 1, 2017 to the first day of such Insurance Review Period; <i>plus</i> b. the amount calculated pursuant to paragraph <u>a.</u> of this definition, indexed from the first day of such Insurance Review Period to the second Insurance Renewal Date in such Insurance Review Period.
<u>“Proposer” and “Proposers”</u>	each has the meaning given to it in the Project Agreement.
<u>“Proprietary Intellectual Property”</u>	means Project Intellectual Property that is patented or copyrighted by any O&M Contractor-Related Entity (other than the O&M Contractor), or, if not patented or copyrighted, is created, held and managed as a trade secret or confidential, proprietary information by the relevant O&M Contractor-Related Entity, excluding any item of Project Intellectual Property that is produced for multiple purposes and is not unique to the technology that is being applied to or for the Project.
<u>“Protection in Place”</u>	subject to <u>Section 4.1.4</u> of <u>Schedule 10</u> (<i>Design and Construction Requirements</i>) to the Project Agreement, has the meaning given to it in the applicable URA.
<u>“Public ROW Records”</u>	means any record affecting a ROW Parcel that is maintained by: <ol style="list-style-type: none"> a. the Colorado Department of Public Health and Environment, the Colorado Department of Labor and Employment, Division of Oil and Public Safety, or the EPA; or b. the: <ol style="list-style-type: none"> i. County Assessor’s office; ii. County Treasurer’s office; or iii. office of the Clerk and Recorder, with respect to paragraph <u>b.</u>, for the county in which the ROW Parcel is located, to the extent that such records were referenced in any title commitment in the possession of or made available to the Preferred Proposer and/or the O&M Contractor-Related Entities on or prior to the Setting Date.
<u>“Public Safety Order”</u>	means a rule, order or directive from the U.S. Department of Homeland Security, the State Department of Public Safety (including the Division of Homeland Security and Emergency Management) or by any Emergency Service regarding specific security threats to the Project or the region within the State in which the Project is located or which the Project serves, to the extent such rule, order or directive: <ol style="list-style-type: none"> a. requires specific changes in the O&M Contractor’s normal design, construction, operation or maintenance procedures in order to comply therewith; and b. must be complied with by the O&M Contractor (in

connection with performance of the O&M Work After Construction) as a matter of Law.

- “Public Utility” means a Utility that is owned by a Publicly Owned Utility.
- “Publicly Owned Utility” means each of:
- a. Aurora Water;
 - b. the City and County of Denver, acting through its Board of Water Commissioners;
 - c. the City and County of Denver Wastewater Management Division; and
 - d. the Metropolitan Wastewater Reclamation District.
- “Punch List” means each Milestone Completion Punch List and the Substantial Completion Punch List.
- “Punch List Item” means any minor O&M Defect or Nonconforming Work which individually, and in aggregate with all other such Punch List Items, will not have any material or adverse effect on the normal, uninterrupted and safe use and operation of the affected Element of the Project for its intended purpose.
- “Qualifying Change in Law” means:
- a. a Change in Law that requires the O&M Contractor to incur any additional expenditure that (i) would be treated as a capital expenditure in accordance with GAAP and (ii) is in connection with the performance of O&M Work After Construction (whether such expenditure is required to be incurred either during the Construction Period or during the Operating Period); or
 - b. any enactment, promulgation, adoption, change or modification of Federal Law with respect to the investigation, removal, treatment, storage, transportation, management and/or remediation of (i) Unexpected Groundwater Contamination Conditions or (ii) Unexpected Hazardous Substances that would, in the case of (i) or (ii), constitute a Change in Law if proviso (i) to the definition of Change in Law in this Part A of Annex A (*Definitions and Abbreviations*) were disregarded, that requires the O&M Contractor to incur any additional expenditure that (A) would be treated as a capital expenditure in accordance with GAAP and (B) is in connection with the performance of O&M Work After Construction (whether such expenditure is required to be incurred either during the Construction Period or during the Operating Period),
- excluding in the case of a. and b. any:
- c. Discriminatory Change in Law; and
 - d. Change in Law that is made in response to any breach of Law, Governmental Approval, Permit or this Agreement, or fraud, willful misconduct, criminal conduct, recklessness, bad faith or negligence of any O&M Contractor-Related Entity,
- provided that any Change in Costs payable to the O&M Contractor

as a result of the occurrence of a Compensation Event falling within this definition shall not include any Change in Costs of the O&M Contractor that do not solely and exclusively relate to the performance of O&M Work After Construction.

“Quality Assurance Oversight”

means the act of testing or inspecting of the O&M Work After Construction performed by qualified testing or inspecting personnel employed by the Department or its designated agent to independently establish conformity to this Agreement.

“Quality Management Plan”

means, from time to time, the then current plan that satisfies the requirements of Section 6 of Schedule 8 (Project Administration) and has been submitted by the O&M Contractor and Approved by the Developer pursuant to Schedule 8 (Project Administration).

“Quality Records Database”

has the meaning given to it in the Project Agreement.

“Railroad”

means either the tracks, bridges and systems used for rail traffic in the vicinity of I-70 Mainline, or the UPRR, BNSF or DRIR, as the context may require.

“Railroad Forces”

means Railroad engineering and construction personnel, or Railroad designated contractors employed or contracted directly by the respective Railroad.

“Rating Agency”

means each of:

- a. Fitch, Inc.;
- b. Moody’s Investors Service, Inc.;
- c. Standard & Poor’s Ratings Services; and
- d. DBRS, Inc.,

provided in each case that such entity is at the relevant time a Registered Rating Agency.

“Reasonable Efforts”

means all those steps in the power of the relevant Party that are capable of producing the desired result, being steps which a prudent, determined and reasonable person desiring to achieve that result would take, provided that, subject to its other express obligations under this Agreement:

- a. where the relevant Party is either the Developer or the O&M Contractor, the relevant Party shall not be required to expend funds except for those:
 - i. reasonably incidental or ancillary to the steps to be taken by the relevant Party (including its reasonable travel expenses, correspondence costs and general overhead expenses); or
 - ii. that the other Party agrees to reimburse in advance; and
- b. where the relevant Party is the Developer, the relevant Party shall not be required to:
 - i. take any action to the extent funds are unavailable to undertake such action;
 - ii. take any action that is contrary to this Agreement,

Law, or any Governmental Approval, as determined by the Developer in its discretion;

- iii. Intentionally Omitted;
- iv. Intentionally Omitted;
- v. take a position that would not be usual and customary for similarly situated developers of public-private partnership projects to take in addressing similar circumstances affecting other projects (except for usual and customary arrangements that are incompatible with the Project's contracting methodology); or
- vi. refrain from concurring with a position taken by any Governmental Authority or the Enterprises if the Developer believes that position to be correct.

<u>"Recognized Hazardous Materials"</u>	has the meaning given to it in <u>Section 23.1.1 of Schedule 17</u> (<i>Environmental Requirements</i>).
<u>"Reevaluation"</u>	means any NEPA evaluation required or prepared pursuant to 23 CFR § 771.129.
<u>"Reference Design"</u>	means the preliminary technical blueprint and description of essential design elements for the Project set out in the Reference Documents.
<u>"Reference Document"</u>	means each of the materials, documents and data listed in <u>Schedule 29</u> (<i>Reference Documents</i>) to the Project Agreement and made available prior to the Final Project Information Date pursuant to Part 2, <u>Section 3.1.a</u> .
<u>"Refinancing Gain"</u>	has the meaning given to it in the Project Agreement.
<u>"Registered Rating Agency"</u>	means a nationally recognized statistical rating organization registered with the Office of Credit Rating of the U.S. Securities and Exchange Commission.
<u>"Related Transportation Facility"</u>	means any existing and future bridge, highway, street and road or other transportation facility of any mode, including: <ul style="list-style-type: none"> a. directly related component facilities; and b. upgrades and expansions thereof, <p>that, in any such case, are or will be connecting with, or crossing under or over, the Project, but which is not (at the relevant time) part of the Project, including:</p> <ul style="list-style-type: none"> c. Denver Planned Projects; and d. all CCD Identified Future Improvements.
<u>"Release"</u>	means any emission, spill, seepage, leak, escape, leaching, discharge, injection, pumping, pouring, emptying, dumping, disposal, migration, or release of Hazardous Substances from any source into or upon the Environment or any Improvement, including any of the foregoing, or any other action, that exacerbates an existing Release or condition of Hazardous Substances contamination.
<u>"Relevant Contract Year"</u>	has the meaning given to it in Part 2, <u>Section 2.3</u> .
<u>"Relevant Event"</u>	means any Delay Relief Event or Compensation Event.
<u>"Relevant Insurance"</u>	the insurance markets which collectively insure the majority of transportation

- Markets related infrastructure projects in the United States from time to time, which as of the Agreement Date are New York, Bermuda and London.
- “Relevant Obligation” has the meaning given to it in Part 2, Section 24.2.g.i.
- “Relief Event” means:
- a. any of the following (“Delay Relief Events”):
 - i. any Unexcused Railroad Delay;
 - ii. any Unexpected Governmental Approval Delay; and
 - iii. any breach by the City of Denver of the Denver IGA that results in:
 - A. the duration of any street occupancy permit issued by the City of Denver not being for a duration equal to the Reasonable Construction Time Period (as defined in Section 4.A.(iii) of the Denver IGA) plus 10% of that time period; or
 - B. the City of Denver unreasonably withholding or delaying any permit that it is required to issue in connection with the Construction Work pursuant to Section 4.A.(iv) of the Denver IGA,

provided that the O&M Contractor has complied with the City of Denver permit process set out in Reference Document number 29.8.01;
 - b. any Force Majeure Event;
 - c. any:
 - i. fire or explosion;
 - ii. geomagnetic storm; or
 - iii. earthquake;
 - d. riot or illegal civil commotion;
 - e. any Change in Law (excluding (i) any Discriminatory Change in Law and (ii) any Qualifying Change in Law);
 - f. any Third Party Release of Hazardous Substances that occurs during the Construction Period;
 - g. any accidental loss or damage to the Right-of-Way, any Additional Right-of-Way or any Permit Areas (excluding O&M Contractor-risk Permit Areas) in respect of which the O&M Contractor holds Permits;
 - h. any failure by the City of Denver:
 - i. to provide to the Developer within 15 Working Days any comments in connection with the Construction Work that it is required to provide in relation to any submittal within 10 “business days” pursuant to the Preamble in Exhibit K of the Denver IGA; or
 - ii. in the event that any 10 “business day” period referred to in the Preamble in Exhibit K of the

Denver IGA is adjusted as contemplated in such Preamble, to provide to Developer within five Working Days of the expiry of such adjusted period comments in connection with the Construction Work that is the subject of the relevant submittal;

- i. any incident of physical damage to an Element of the Project or delay of or disruption to the Work caused by a failure by the Cover Top Maintainer to perform the City of Denver's obligations in accordance with the applicable terms of the Cover Maintenance Agreement during the Operating Period;
- j. the O&M Contractor's obligation to comply with Section 12.2.a with respect to any Related Transportation Facility that is not Known or Knowable (other than with respect to any required capital expenditure, to which paragraph n. of the definition of Compensation Event in this Part A of Annex A (*Definitions and Abbreviations*) shall apply);
- k. any weather event manifesting severe and historically unusual wind and/or liquid precipitation conditions directly affecting any part of the Site that is recognized as a "severe local storm", or "flood" event by the National Oceanic and Atmospheric Administration's National Weather Service in a published notice, alert or warning (a "Severe Weather Event");
- l. any delay of or disruption to the O&M Work After Construction caused by the operation or maintenance of the Limited O&M Work Segments, but only to the extent such operation or maintenance is not the responsibility of the O&M Contractor (or another O&M Contractor-Related Entity) pursuant to this Agreement or otherwise; or
- m. any unusual and unreasonable delay by the Colorado Department of Public Health and Environment in issuing, agreeing to modify, renewing or extending any Remediation Activities Discharging to Surface Waters Permit, Stationary Source Air Quality Permit or Subterranean Dewatering or Well Development Permit,

in each case unless and to the extent such event arises as a result of any breach of Law, Governmental Approval, Permit or this Agreement, or fraud, willful misconduct, criminal conduct, recklessness, bad faith or negligence by or of any O&M Contractor-Related Entity.

"Renewal Threshold Matrix"

means the matrix attached to Part 2 of this Agreement as Attachment C.

"Renewal Work"

has the meaning given to it in the Project Agreement.

"Representatives"

has the meaning given to it in Part 2, Section 18.2.1.a.

"Requested Dispute Procedures"

has the meaning set forth in Section 4 of Schedule 25 (*Dispute Resolution Procedure*).

"Requested Relocation"

subject to Section 4.1.4 of Schedule 10 (*Design and Construction Requirements*) to the Project Agreement, means any Utility Relocation of a Private Utility that the relevant Private Utility Owner requests be performed

	by Developer pursuant to the terms of any URA.
<u>“Required Action”</u>	has the meaning given to it in Part 2, <u>Section 23.4.3</u> .
<u>“Required Environmental Approvals”</u>	has the meaning given to it in <u>Section 8</u> of <u>Schedule 17</u> (<i>Environmental Requirements</i>).
<u>“Residual Life”</u>	means, for an Element, the period remaining until the Element will next require reconstruction, rehabilitation, restoration, renewal or replacement.
<u>“Restricted Change”</u>	means any Enterprise Change (or aspect thereof) proposed in an Enterprise Change Notice or an Enterprise Directive Letter or any Developer Change (or aspect thereof) proposed in a Developer Change Notice or a Developer Directive Letter that would, if implemented: <ul style="list-style-type: none"> a. require the O&M Work After Construction (as changed by the proposed Enterprise Change or Developer Change) to be performed in a way that: <ul style="list-style-type: none"> i. violates Law; ii. is inconsistent with Good Industry Practice; or iii. gives rise to a material risk to the health or safety of any person; or b. cause the revocation of any existing Governmental Approval, Permit or third party consent that is necessary for the performance of the existing O&M Work After Construction under circumstances such that it would be impossible or highly unlikely that the O&M Contractor would be able to obtain a new or amended equivalent Governmental Approval, Permit or third party consent relating to the O&M Work After Construction (as changed by the proposed Enterprise Change, as applicable); c. materially and adversely affect the O&M Contractor’s ability to carry out the O&M Work After Construction; and/or d. materially and adversely change the nature of the Project (including its risk profile).
<u>“Reviewable Deliverable”</u>	means any Deliverable that is a Deliverable for Approval, a Deliverable for Acceptance or a Deliverable for Information.
<u>“RFC Documents”</u>	means Release for Construction Documents.
<u>“RFP”</u>	has the meaning given to it in the Project Agreement.
<u>“Right-of-Way”</u>	means, collectively, all of the land, improvements and fixtures that are located within all ROW Parcels, but in each case with effect only from the Project License Start Date and only until the Project License End Date, in each case, for the relevant ROW Parcel.
<u>“Right-of-Way Betterment”</u>	means appreciation in the value of a property due to beneficial public works executed in its near vicinity.
<u>“Right-of-Way Relocation”</u>	means displacing a current resident or occupant to a new location.
<u>“ROD”</u>	has the meaning given to it in the Project Agreement.
<u>“ROD Construction Limits”</u>	has the meaning given to it in the Project Agreement.

<u>“Routine Maintenance”</u>	means maintenance activities that are scheduled in advance and occur on a regular basis, such as weekly, monthly, quarterly, semi-annually or annually, which are normally included as an annually recurring cost in maintenance and repair budgets for transportation facilities (and associated equipment) of similar natures and in similar environmental conditions as the Project.
<u>“Routine O&M Work ESB Goal”</u>	has the meaning given to it in <u>Section 6.2.2.b</u> of <u>Schedule 15</u> (<i>Federal and State Requirements</i>).
<u>“Routine O&M Work”</u>	means all O&M Work, excluding Renewal Work.
<u>“ROW Parcel”</u>	means each parcel of land that either: <ul style="list-style-type: none"> a. is referred to in the “Parcel #” column in the ROW Schedule , each as identified in the Right-of-Way Exhibits in the Contract Drawings; or b. comprises part of the Existing CDOT Right-of-Way, but, with respect to any partial acquisition identified in the ROW Schedule , only including any part thereof that Developer elects to have the Department acquire and deliver pursuant to <u>Section 1.3</u> of <u>Schedule 18</u> (<i>Right-of-Way</i>).
<u>“ROW Schedule ”</u>	means the table set out in <u>Appendix A</u> to <u>Schedule 18</u> (<i>Right-of-Way</i>).
<u>“RRA”</u>	has the meaning given to it in the Project Agreement.
<u>“Safety Compliance”</u>	means any and all improvements, repair, reconstruction, rehabilitation, restoration, renewal, replacement and/or changes in configuration or procedures in relation to the Project to correct a specific safety condition or risk in relation to the Project that the Developer, the Enterprises, CDOT or another Governmental Authority that has relevant jurisdiction have reasonably determined to exist.
<u>“Safety Compliance Order”</u>	means a written order or directive from the Enterprises to Developer, and provided by Developer to the O&M Contractor to implement Safety Compliance, provided that such order or directive shall not be used to effect a change to the Technical Requirements or the Project Standards or safety-related portions of the O&M Work After Construction affected by a Change in Law.
<u>“Scope of Services”</u>	means the scope of services attached to Part 2 of this Agreement as Attachment A, which matrix allocates responsibility for the Renewal Work between the Developer and the O&M Contractor.
<u>“SDBPP”</u>	has the meaning given to it in <u>Section 5.1</u> of <u>Schedule 15</u> (<i>Federal and State Requirements</i>).
<u>“Security Documents”</u>	has the meaning given to it in the Project Agreement.
<u>“Service Line”</u>	means: <ul style="list-style-type: none"> a. a Utility line, the function of which is to directly connect the improvements on an individual property to another Utility line located off such property, which other Utility line connects more than one such individual line to a larger system; or b. a Utility line on public or private property that services structures located on such property.
<u>“Setting Date”</u>	means April 25, 2017.

<u>“Severe Weather Event”</u>	has the meaning given to it in paragraph <u>k.</u> of the definition of Relief Event in this <u>Part A of Annex A (Definitions and Abbreviations)</u> .
<u>“Similar Project”</u>	means any highway facility within the State or elsewhere in the United States, including a construction or reconstruction project involving such a facility, that is more similar than not to the Project based on any one or more of the following elements: size, value, scope, technical complexity, geography, usage and risk profile.
<u>“Site”</u>	means, at any time: <ul style="list-style-type: none"> a. the Right-of-Way; b. any Additional Right-of-Way; c. any Permit Areas in respect of which the O&M Contractor holds Permits at that time; and d. any Temporary Properties in respect of which the O&M Contractor owns or holds Temporary Property Rights at that time.
<u>“Small Business and Workforce Goals”</u>	has the meaning given to it in <u>Section 6.1 of Schedule 15 (Federal and State Requirements)</u> .
<u>“Snow and Ice Control Commencement Date”</u>	has the meaning given to it in the Project Agreement.
<u>“Snow and Ice Control Equipment”</u>	has the meaning given to it in <u>Section 11.6 of Schedule 11 (Operations and Maintenance Requirements)</u> .
<u>“Snow and Ice Control Plan”</u>	means the plan described in <u>Section 9.3 of Schedule 11 (Operations and Maintenance Requirements)</u> .
<u>“Snow and Ice Control Services”</u>	means the snow and ice control services as described in <u>Section 11 of Schedule 11 (Operations and Maintenance Requirements)</u> .
<u>“Snow Route”</u>	means the documented configuration and path(s) traversed by a snowplow or Spreader documented in Developer’s Snow and Ice Control Plan.
<u>“Special Events”</u>	means events expected to produce higher than average traffic on the I-70 East Corridor.
<u>“Special Permit”</u>	means a Permit issued by CDOT to permit a Person with a right under Law to have access to the Right-of-Way and any Additional Right-of-Way for a purpose which does not include carrying out any excavation in order to exercise that right.
<u>“Special Provisions”</u>	means Part 2, <u>Sections 36, 46.1 and 53</u> .
<u>“Specialist Inspections”</u>	means inspections of specified Elements or components for which testing, special tools or equipment are necessary, including inspections required to be undertaken in accordance with <u>Section 8.4 of Schedule 11 (Operations and Maintenance Requirements)</u> .
<u>“Specified Additional Insured”</u>	means: <ul style="list-style-type: none"> a. each Indemnified Party; b. any Railroad, including its officers, directors and employees, to the extent required to be treated as an additional insured under any RRA; c. any Utility Owner, including its officers, directors and

- employees, to the extent required to be treated as an additional insured under any URA, and Sprint;
- d. each Lender; and
 - e. any other Person as and when agreed by the Parties or otherwise reasonably required by the Developer.
- “Spreader” means a vehicle capable of spreading salt, de-icers and anti-icers.
- “Sprint” has the meaning given to it in Section 4.1.3 of Schedule 10 (*Design and Construction Requirements*) to the Project Agreement.
- “Sprint Reimbursement Agreement” has the meaning given to it in Section 4.1.3 of Schedule 10 (*Design and Construction Requirements*) to the Project Agreement.
- “Sprint Work Order” has the meaning given to it in Section 4.1.3 of Schedule 10 (*Design and Construction Requirements*) to the Project Agreement.
- “Standard Special Provisions” means the Standard Special Provisions listed in Section 4 of Appendix A to Schedule 10A (*Applicable Standards and Specifications*) to the Project Agreement.
- “Standard Specifications” means the CDOT Standard Specifications.
- “State” means the State of Colorado.
- “State Sales Tax” has the meaning given to it in Part 2, Section 30.1.3.b.
- “Storm Drain” means a network of pipes that connects inlets, manholes, and other drainage features to an outfall.
- “Subcontract” means any contract (at any tier) entered into by the O&M Contractor or a Subcontractor including a Supplier with one or more third parties directly in connection with the carrying out of the O&M Work After Construction or any of the O&M Contractor’s other obligations under this Agreement.
- “Subcontractor” means any party, other than the O&M Contractor, to a Subcontract.
- “Subcontractor Breakage Costs” means Losses that have been or will be reasonably and properly incurred by the O&M Contractor under a Subcontract as a direct result of the termination of this Agreement (and which Losses shall not include lost profit or lost opportunity, but may, for certainty, include payment to a Subcontractor for work performed prior to the O&M Termination Date, but not yet paid for by the O&M Contractor), but only to the extent that:
- a. the Losses are incurred in connection with the Project and in respect of the O&M Work After Construction required to be performed by the O&M Contractor, including:
 - i. any materials or goods ordered or Subcontracts placed that cannot be cancelled without such Losses being incurred;
 - ii. any expenditure incurred in anticipation of the performance or the completion of Work in the future; and
 - iii. the cost of demobilization including the cost of any relocation of equipment used in connection with the Project;
 - b. the Losses are incurred under arrangements and/or agreements that are consistent with terms that have been

entered into in the ordinary course of business and on an arm's length basis, and that otherwise comply with this Agreement; and

- c. the O&M Contractor and the relevant Subcontractor have each used their Reasonable Efforts to mitigate such Losses.

<u>“Substantial Completion”</u>	means the satisfaction of all Substantial Completion Conditions, as confirmed by the Developer's providing a copy of the Substantial Completion Certificate.
<u>“Substantial Completion Certificate”</u>	has the meaning given to it in the Project Agreement.
<u>“Substantial Completion Conditions”</u>	has the meaning given to it in the Project Agreement.
<u>“Substantial Completion Date”</u>	has the meaning given to it in the Project Agreement.
<u>“Substantial Completion Deduction Amount”</u>	means the amount calculated in accordance with <u>Section 1</u> of <u>Part 1</u> of <u>Schedule 6</u> (<i>Performance Mechanism</i>).
<u>“Substantial Completion Milestone Payment”</u>	means the Milestone Payment payable in respect of the achievement of Substantial Completion.
<u>“Substantial Completion Payment”</u>	has the meaning given to it in <u>Section 3(b)</u> of <u>Schedule 5</u> (<i>Milestone Payments</i>).
<u>“Substantial Completion Punch List”</u>	has the meaning given to it in the Project Agreement.
<u>“Substantial Completion Punch List Items”</u>	has the meaning given to it in the Project Agreement.
<u>“Supervening Event”</u>	means any: <ul style="list-style-type: none"> a. Relief Event; b. Compensation Event; or c. Appendix B Parcel Unexpected Hazardous Substances Event to the extent that it does not constitute a Compensation Event.
<u>“Supervening Event Notice”</u>	has the meaning given to it in Part 2, <u>Section 15.1.2</u> .
<u>“Supervening Event Submission”</u>	means any Preliminary Supervening Event Submission or any Detailed Supervening Event Submission.
<u>“Supplied Survey Data”</u>	means the survey data for the Construction Work identified in the Reference Documents.
<u>“Supplier”</u>	means a Subcontractor that primarily provides goods and/or materials, but not services, under the terms of its Subcontract.
<u>“Table 6A.1”</u>	means Table 6A.1 set out in <u>Appendix A</u> to <u>Schedule 6</u> (<i>Performance Mechanism</i>).
<u>“Table 6A.2”</u>	means Table 6A.2 set out in <u>Appendix A</u> to <u>Schedule 6</u> (<i>Performance Mechanism</i>).
<u>“Target”</u>	means, in respect of an Element, the condition of such Element specified in

the “Target” column in the Performance and Measurement Tables (as updated in accordance with Schedule 11 (*Operations and Maintenance Requirements*)).

- “Tax” means any Federal, State, local or foreign income, margin, gross receipts, sales, use, excise, transfer, consumer, license, payroll, employment, severance, stamp, business, occupation, premium, windfall profits, environmental (including taxes under Section 59A of the Internal Revenue Code of 1986), customs, permit, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, registration, value added, alternative or add-on minimum, estimated or other tax, levy, impost, duty, fee or charge imposed, levied, collected, withheld or assessed at any time, whether direct or indirect, relating to, or incurred in connection with, the Project, the performance of the Work, the Milestone Payments, Performance Payments, other compensation or act, business, status or transaction of any O&M Contractor -Related Entity, including any interest, penalty or addition thereto, in all cases whether disputed or undisputed.
- “Technical Deliverable” means any Deliverable that the O&M Contractor is required to submit pursuant to Schedules 8 (*Project Administration*), 11 (*Operations and Maintenance Requirements*), 17 (*Environmental Requirements*) and 18 (*Right-of-Way*).
- “Technical Proposal Deadline” means June 1, 2017.
- “Technical Requirements” means the obligations of, and any requirements to be satisfied by, the O&M Contractor under any of Schedules 8 (*Project Administration*), 9 (*Submittals*), 11 (*Operations and Maintenance*), 12 (*Handback Requirements*), 17 (*Environmental Requirements*) and 18 (*Right-of-Way*) and Table 6A.1 and Table 6A.2.
- “Temporary Property” means:
- a. Intentionally Omitted; and
 - b. other areas not within the Right-of-Way or any Additional Right-of-Way in which the O&M Contractor is performing O&M Work After Construction for a temporary period, such as temporary Work sites, lay down areas, staging areas, storage areas, stockpiling areas, earthwork material borrow sites, equipment parking areas and similar areas.
- “Temporary Property Rights” means, in respect of any Temporary Property, any right or interest in, or in respect of, such Temporary Property.
- “Temporary ROW Easement” means any temporary easement in an area that is part of the Right-of-Way or any Additional Right-of-Way.
- “Term” has the meaning given to it in the Project Agreement.
- “Termination Amount” means, with respect to any early termination of this Agreement, the amount of compensation, if any, owing from the Developer to the O&M Contractor or from the O&M Contractor to the Developer, as applicable, as determined pursuant to this Agreement.
- “Termination Deduction Amount” means, without double-counting, any:
- a. accrued Monthly Operating Period Closure Deductions,

Monthly Noncompliance Deductions and Operations Goal Deductions that, as of the O&M Termination Date, have not been taken into account in the calculation of any payment actually made to the O&M Contractor by the Developer prior to the O&M Termination Date; and

- b. any other amount that the Developer is entitled to set-off against the any Termination Amount pursuant to Section 5(a) of Part 3 of Schedule 4 (Payments).

“Termination Insurance Proceeds”

means all proceeds from insurance payable to the O&M Contractor under any Available Insurance coverage, or that should otherwise be collectible by the O&M Contractor from that portion of the Available Insurance that is required to be maintained by the O&M Contractor pursuant to Part 2, Section 25 and Schedule 13 (Required Insurances), in any such case on or after the O&M Termination Date.

“Termination Liability Cap”

has the meaning given in Part 1, Article 10.2.

“Termination Notice”

means a notice of termination issued pursuant to Part 2, Section 33.1.

“Test” or “Testing”

means the procedure and method of acquiring and recording physical data and comparing it to set standards and submitting a statement to such conditions or operations as will lead to its Acceptance or rejection (deficiency, defective condition, nonconformance) of the item.

“Third Party Agreements”

has the meaning given to it in the Project Agreement.

“Third Party Intellectual Property”

means any Intellectual Property used or applied by the O&M Contractor or any O&M Contractor-Related Entity in connection with the Project or the O&M Work After Construction which is owned by any Person other than the Developer, the Enterprises, CDOT or an O&M Contractor-Related Entity.

“Third Party Release of Hazardous Substances”

means any Release of Hazardous Substances on, in, under, from or in the vicinity of the Site caused by any Person that is not an O&M Contractor-Related Entity, a Developer-Related Entity, either Enterprise or CDOT, which Release:

- a. occurs:
 - i. with respect to any ROW Parcel, after the Setting Date; and
 - ii. with respect to any Additional ROW Parcel, on or after its Project License Start Date; and
- b. is required to be investigated, removed, treated, stored, transported, managed and/or remediated pursuant to Law, any Governmental Approval or the O&M Contractor’s obligations under this Agreement,

excluding any such Release to the extent such results in the presence of Hazardous Substances in groundwater.

“Threshold Zone”

means the length of roadway between the Portal and the Transition Zone.

“TIFIA Effective Date”

means the date of the TIFIA Loan Agreement.

“TIFIA Loan”

has the meaning given to it in the Project Agreement.

“TIFIA Loan Agreement”

means the agreement between the US DOT and the Developer pursuant to

which the US DOT will make the TIFIA Loan available to the Developer.

<u>“Tolled Express Lane”</u>	means the lanes on the I-70 Mainline where operational strategies are proactively implemented and managed in response to changing conditions.
<u>“Tow Plow”</u>	means a snow plow blade mounted on a ballasted trailer that is towed behind a conventional plow or combination plow/spreader truck, where controls in the towing vehicle deploy the tow plow into an adjacent lane, permitting two lanes to be plowed by a single tow vehicle.
<u>“Transferrable Assets”</u>	<p>means all Assets, including all transferrable warranties with respect to such Assets, except:</p> <ul style="list-style-type: none"> a. any Asset that falls within paragraphs <u>c.</u>, <u>d.</u>, <u>e.</u> or <u>f.</u> of the definition of Assets in this <u>Part A of Annex A (Definitions and Abbreviations)</u> that: <ul style="list-style-type: none"> i. is not affixed to any Element, the Right-of-Way or any Additional Right-of-Way; and ii. to the extent customarily located or used on any part of the Site in connection with the Project: <ul style="list-style-type: none"> A. is not owned by the O&M Contractor; B. was not purchased by another O&M Contractor-Related Entity primarily or exclusively funds received, directly or indirectly, from the Developer; and b. any Temporary Properties, and any buildings located on such properties.
<u>“Transition Zone”</u>	means the length of roadway between the Threshold Zone and the Interior Zone and which has variable illumination depending upon the illumination in the Threshold Zone to allow adaption to the Interior Zone illumination, and the length of which is determined by the posted vehicle speed
<u>“Transportation Commission”</u>	has the meaning given to it in the Project Agreement.
<u>“Transportation Demand Model”</u>	means a program that encompasses tools to help with traffic congestion mitigation by offering alternatives to the single occupant vehicle.
<u>“Travel Time Indicators”</u>	means the system of antennas and readers that detect toll tag transponders in vehicles.
<u>“Ultimate”</u>	has the same meaning as given to the Preferred Alternative.
<u>“Unavailable Term”</u>	<p>means any Insurance Term that, at the time an Insurance Policy is obtained or renewed:</p> <ul style="list-style-type: none"> a. is not available to the O&M Contractor in the worldwide insurance market from Eligible Insurers on terms required by this Agreement; or b. is not generally being incorporated in insurance procured in the worldwide insurance market from Eligible Insurers by contractors in relation to transportation related infrastructure projects in the United States due to the level of the insurance premium payable for insurance incorporating such Insurance Term,

provided that, for certainty, an Unavailable Term shall not include any risk or peril that is Uninsurable.

“Unexcused Railroad Delay”

means:

- a. any breach of a RRA by a Railroad; or
- b. to the extent not otherwise constituting a breach:
 - i. any unexcused delay (as determined by reference to the relevant RRA) by a Railroad in performing any work required to performed by it, or in reviewing or approving any Deliverable for Third Party Review (as such term is defined in Schedule 9 (Submittals)) required to be reviewed or approved by it, under the relevant RRA; or
 - ii. any unreasonable withholding by any Railroad with relevant jurisdiction under the terms of a RRA or otherwise of the issuance or renewal of any Permit necessary for the performance of the O&M Work After Construction.

“Unexcused Utility Owner Delay”

means:

- a. any breach of a URA or Utility Work Order by a Utility Owner; or
- b. to the extent not otherwise constituting a breach:
 - i. any unexcused delay (as determined by reference to the relevant URA and/or relevant Utility Work Order) by a Utility Owner in performing any work required to be performed by it, or in reviewing or approving any Deliverable for Third Party Review (as such term is defined in Schedule 9 (Submittals)) required to be reviewed or approved by it, under the relevant URA and/or Utility Work Order; or
 - ii. any unreasonable withholding by any Utility Owner with relevant jurisdiction under the terms of a URA or otherwise of the issuance or renewal of any Permit necessary for the performance of the O&M Work After Construction,

provided that, for certainty, references in this definition to:

- c. any “URA” shall include any Sprint Reimbursement Agreement; and
- d. a “Utility Work Order” shall include any Sprint Work Order; and
- e. any breach of a Utility Work Order in paragraph a. of this definition shall, as it applies to a Sprint Work Order, mean any failure by Sprint to comply with the terms specified in such Sprint Work Order that apply to Sprint notwithstanding it is not a party to such Sprint Work Order.

“Unexpected Endangered Species”

means any animal or plant species listed as threatened or endangered under and subject to an applicable threatened or endangered species Law found at the Right-of-Way, or at any Permit Areas (excluding O&M Contractor-risk Permit Areas) in respect of which the O&M Contractor holds

a Permit, the temporary, continual or habitual presence of which on the Right-of-Way or any such Permit Area was not Known or Knowable at the Setting Date.

“Unexpected Geological Conditions”

means any subsurface or latent geological conditions encountered at the exact bore hole locations identified in:

- a. the boring logs set out in Appendices B and D1 of the Final Preliminary Subsurface Investigation Report I-70 East Corridor Project Partial Cover Lowered Alternative with Managed Lanes Options Brighton Boulevard to Chambers Road Denver, Colorado CDOT Project No: FBR 0709-234 (19631) prepared by Yeh and Associate, Inc. dated September 21, 2015; and
- b. the boring logs set out in Appendix C of the Preliminary Subsurface Investigation Report for Partial Cover Lowered (PCL) Alternative I-70 East Corridor EIS CDOT Region 6 prepared by Yeh and Associates, Inc. dated October 31, 2012; and
- c. the boring logs set out in Appendix B of the Addendum Final Preliminary Subsurface Investigation Report I-70 East Corridor Project Partial Cover Lowered Alternative with Managed Lanes Options Brighton Boulevard to Chambers Road Denver, Colorado CDOT Project No: FBR 0709-234 (19631) prepared by Yeh and Associate, Inc. dated June 9, 2016,

in each case that differ materially from those conditions indicated in such boring logs for such bore hole locations, which conditions were not Known or Knowable at the Setting Date.

“Unexpected Governmental Approval Delay”

means, in the event that :

- a. the Enterprises have complied with their obligations under Section 8.4.4.a of the Project Agreement and the Developer has complied with its obligations under Part 2, Section 8.4.4.a of this Agreement; and
- b. in order so to comply:
 - i. the Enterprises were, pursuant to paragraph a. or paragraph b. of the definition of Reasonable Efforts in Part A of Annex A (*Definitions and Abbreviations*) to the Project Agreement, not required to take (and did not take) an action necessary to effect issuance, modification, renewal or extension of any Governmental Approval or Permit pursuant to Sections 8.4.4.a.i and/or 8.4.4.a.ii of the Project Agreement; and
 - ii. the Developer was, pursuant to paragraph a. or paragraph b. of the definition of Reasonable Efforts in this Part A of Annex A (*Definitions and Abbreviations*), not required to take (and did not take) an action necessary to effect issuance, modification, renewal or extension of any Governmental Approval or Permit pursuant to Part 2, Sections 8.4.4.a.i and/or 8.4.4.a.ii,

any resulting unusual and unreasonable delay by a Governmental Authority in issuing, agreeing to modify, renewing or extending any Governmental Approval or Permit that would have been avoided if the Enterprises or the Developer had taken the relevant action referred to in paragraph b. of this definition.

“Unexpected Groundwater Contamination Condition”

means, in respect of groundwater present in or under any part of the Right-of-Way and any Permit Areas in respect of which the O&M Contractor holds a Permit (other than any O&M Contractor-risk Permit Area) which groundwater is ultimately subject to discharge through any single discharge point pursuant to an applicable Governmental Approval, any Hazardous Substance contamination in such groundwater at concentration levels that are required to be investigated, removed, treated, stored, transported, managed or remediated pursuant to Law or the O&M Contractor’s obligations under this Agreement, as and to the extent such contamination and concentration levels are established at such single discharge point pursuant to Section 23.4.4 of Schedule 17 (Environmental Requirements), excluding any such contamination:

- a. by a substance identified in the “Chemical Name” column in Appendix C (Groundwater Benchmark Concentrations) of Schedule 17 (Environmental Requirements) at concentration levels at or below the applicable value set out in the “Value” column in that Appendix C; or
- b. to the extent such contamination constitutes an O&M Contractor Release of Hazardous Substances.

“Unexpected Groundwater Contamination Event”

means:

- a. Intentionally Omitted; and
- b. the encountering or discovery of, collectively, all Unexpected Groundwater Contamination Conditions which conditions require permanent and ongoing treatment or remediation pursuant to Law or the Developer’s obligations under the Project Agreement during the Operating Period and to enable Developer (or, pursuant to this Agreement, the O&M Contractor, as the case may be) to perform O&M Work After Construction.

“Unexpected Hazardous Substances”

means any Hazardous Substances (including soil or surface water contaminated with Hazardous Substances) present on, in or under any part of the Right-of-Way, or any Permit Areas in respect of which the O&M Contractor holds a Permit, at concentration levels or in quantities that are required to be investigated, removed, treated, stored, transported, managed or remediated pursuant to Law or the O&M Contractor’s obligations under this Agreement, excluding any such Hazardous Substances:

- a. present in any groundwater;
- b. present in any soil that (for certainty, absent any treatment) meets criteria for reuse, disposal or release on-Site:
 - i. under Law;
 - ii. pursuant to any Permit or Governmental Approval; or
 - iii. in accordance with the Materials Management Plan and the Beneficial Reuse and Materials

Management Plan,

including, for certainty, any such Hazardous Substances that meet such criteria but which cannot be, or are not, reused, disposed of or released on-Site due to:

- iv. there being no available on-Site location to so reuse, dispose of or release such materials; or
- v. any action or decision by or of any O&M Contractor-Related Entity;
- c. present on, in or under any O&M Contractor-risk Permit Area;
- d. present in any "Near Surface Soil" (as defined in the Beneficial Reuse and Materials Management Plan) west of Colorado Boulevard;
- e. required to be investigated, removed, treated, stored, transported, managed and/or remediated by the Enterprises, the Developer or the O&M Contractor in complying with its Property Management obligations pursuant to Section 2.2 of Schedule 18 (Right-of-Way) to this Agreement and Section 2.2 of Schedule 18 (Right-of-Way) to the Project Agreement;
- f. present on or in:
 - i. any building, bridge or structure, including any subsurface structure or facility connected to any such building, bridge or structure; or
 - ii. any underground storage tank registered with the Colorado Department of Labor and Employment, Division of Oil and Public Safety; or
- g. to the extent such constitutes a:
 - i. O&M Contractor Release of Hazardous Substances;
 - ii. Developer Release of Hazardous Substances;
 - iii. Enterprise Release of Hazardous Substances; or
 - iv. Third Party Release of Hazardous Substances.

"Unexpected Historically Significant Remains"

means any antiquities (including structures), fossils, coins, articles of value, cultural artifacts, human burial sites and remains and other similar remains of archaeological, historical, cultural or paleontological interest on or under any part of the Right-of-Way, or of any Permit Areas (excluding O&M Contractor-risk Permit Areas) in respect of which the O&M Contractor holds a Permit, which were not Known or Knowable at the Setting Date.

"Unexpected Utility Condition"

means any Utility present on the Right-of-Way, or on any Permit Areas (excluding O&M Contractor-risk Permit Areas) in respect of which the O&M Contractor holds a Permit, that was not identified or was incorrectly shown, identified or described in the Utility Data, in each case excluding:

- a. any Utility to the extent it was Known or Knowable, which for such purposes shall be deemed to include any Utility that:
 - i. is located at or less than 10 feet distant from the

	horizontal centerline indicated therefor in the Utility Data (without regard to vertical location); and/or
	ii. has an actual nominal diameter (excluding casings and any other appurtenances) within 12 inches of the size indicated in the Utility Data;
	b. any Utility installed on any part of the Right-of-Way after the Project License Start Date, or on any Permit Area after the O&M Contractor secured a Permit providing access and/or use to or of such area; and
	c. any Service Line.
<u>“Unexpected Utility Condition Event”</u>	means the encountering or discovery of any Unexpected Utility Condition.
<u>“Uniform Act”</u>	means the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act, P.L. 91-646.
<u>“Uninsurable”</u>	means a risk or peril, at the time an Insurance Policy is required to be obtained or renewed: <ul style="list-style-type: none"> a. for which Insurance Policies are not available to the O&M Contractor in the worldwide insurance market from Eligible Insurers on terms required by this Agreement; or b. that is not generally being insured against in insurance procured in the worldwide insurance market from Eligible Insurers by contractors in relation to transportation-related infrastructure projects in the United States due to the level of the insurance premium payable for insuring such risk.
<u>“unreasonably withheld”</u>	has the meaning given to it in Part 2, <u>Section 2.2.2.a.</u>
<u>“UPRR”</u>	means Union Pacific Railroad Company.
<u>“UPRR Crossing”</u>	means the existing and/or proposed crossing by the UPRR Railroad through the I-70 East corridor on the Right-of-Way as described in <u>Section 10.1.2 of Schedule 10 (Design and Construction Requirements)</u> to the Project Agreement.
<u>“UPRR Pepsi Lead Crossing”</u>	means the existing and/or proposed crossing of Brighton Boulevard by the UPRR Railroad through the I-70 East corridor on the Right-of-Way as described in <u>Section 10.1.3 of Schedule 10 (Design and Construction Requirements)</u> to the Project Agreement.
<u>“UPRR RRA”</u>	means the railroad agreement with respect to the UPRR Crossing, the UPRR Pepsi Lead Crossing and the UPRR York Street Crossing among CDOT, the City of Denver and UPRR in relation to the Project, a draft of which agreement was provided to the O&M Contractor as one of the Reference Documents numbered 29.10.10.03.
<u>“UPRR Work”</u>	means all duties and services to be furnished and provided by the UPRR as required by the UPRR RRA, as applicable.
<u>“UPRR York Street Crossing”</u>	means the existing and/or proposed crossing of York Street by the UPRR Railroad through the I-70 East corridor on the Right-of-Way as described in <u>Section 10.1.4 of Schedule 10 (Design and Construction Requirements)</u> to the Project Agreement.

<u>“URA”</u>	means: <ol style="list-style-type: none"> a. the utility relocation agreements (copies of each of which were provided in the Reference Documents) between CDOT and each of the Publicly Owned Utilities and the Private Utility Owners (other than Sprint); and b. any Sprint Reimbursement Agreement.
<u>“US DOT”</u>	means the United States Department of Transportation.
<u>“Useful Life Baseline Requirements Table”</u>	means the table set out in <u>Appendix B</u> to <u>Schedule 12</u> (<i>Handback Requirements</i>) to the Project Agreement (as updated in accordance with <u>Section 6.1.4</u> of <u>Schedule 11</u> (<i>Operations and Maintenance Requirements</i>)) to the Project Agreement.
<u>“User”</u>	means any person that is on or about the Project or any portion thereof, or is otherwise making use of the Project for any purpose.
<u>“Utility”</u>	means a privately, publicly or cooperatively owned line, facility and/or system for producing, transmitting or distributing communications, cable television, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, or any other similar commodity including: <ol style="list-style-type: none"> a. the necessary appurtenances to any such line, facility and/or system; and b. any Service Line connecting directly to any such line, facility and/or system, regardless of the ownership of such Service Line, <p>provided that, for certainty, stormwater facilities, irrigation ditches, Intelligent Transportation Systems, Variable Message Signs, video and video detection systems, traffic signals and street lighting shall not constitute “Utilities”.</p>
<u>“Utility Betterment”</u>	subject to <u>Section 4.1.4</u> of <u>Schedule 10</u> (<i>Design and Construction Requirements</i>) to the Project Agreement, has the meaning given to “Betterment” in the applicable URA.
<u>“Utility Data”</u>	means the Utility Drawings, the Utility Matrix, pothole log, manhole tabulation and other Utility information provided in the Reference Documents.
<u>“Utility Drawings”</u>	means the Utility plan design sheets provided in the Reference Documents, as updated from time to time by the O&M Contractor pursuant to <u>Section 4</u> of <u>Schedule 10</u> (<i>Design and Construction Requirements</i>) to the Project Agreement.
<u>“Utility No-Conflict Close Out Form”</u>	means the form provided in <u>Appendix A</u> of <u>Section 4</u> to <u>Schedule 10</u> (<i>Design and Construction Requirements</i>) to the Project Agreement.
<u>“Utility Owner”</u>	means the owner of a Utility.
<u>“Utility Permit”</u>	means a Permit issued by CDOT to permit a Utility Owner with a right under Law to have access to the Right-of-Way and any Additional Right-of-Way in order to exercise that right.
<u>“Utility Relocation”</u>	subject to <u>Section 4.1.4</u> of <u>Schedule 10</u> (<i>Design and Construction Requirements</i>) to the Project Agreement, has the meaning given to “Relocation” in the applicable URA .
<u>“Utility Relocation</u>	subject to <u>Section 4.1.4</u> of <u>Schedule 10</u> (<i>Design and Construction</i>

<u>Standards</u>	<i>Requirements</i>) to the Project Agreement, has the meaning given to “Relocation Standards” in the applicable URA.
<u>“Utility Work”</u>	means any portion of the Construction Work relating to Utility Relocations, Utility Betterments or Requested Relocations, including but not limited to the Activities listed in <u>Section 4.2.9</u> of <u>Schedule 10</u> (<i>Design and Construction Requirements</i>) to the Project Agreement.
<u>“Utility Work Order”</u>	subject to <u>Section 4.1.4</u> of <u>Schedule 10</u> (<i>Design and Construction Requirements</i>), has the meaning given to “Work Order” in the applicable URA and shall be substantially in the form provided in <u>Appendix B</u> of <u>Section 4</u> to <u>Schedule 10</u> (<i>Design and Construction Requirements</i>) to the Project Agreement.
<u>“Variable Message Sign”</u>	means the large dynamic display used for user alerts and notifications.
<u>“Variable Toll Message Sign”</u>	means the static sign with electronic Variable Message Sign inserts that is utilized to display the specific tolls for each segment of the corridor.
<u>“Warrantied Elements”</u>	means the Elements of the Construction Work to be maintained by the applicable Warranty Beneficiaries on and from the Final Acceptance Date (or, in the case of the elements referred to in paragraphs <u>a.</u> and <u>b.</u> of the definition of Cover Top O&M Work in this <u>Part A</u> of <u>Annex A</u> (<i>Definitions and Abbreviations</i>), from the end of the Landscape Warranty period (as described in <u>Section 14.11</u> of <u>Schedule 10</u> (<i>Design and Construction Requirements</i>) to the Project Agreement) in the areas depicted: <ul style="list-style-type: none"> a. with respect to the City of Denver as a Warranty Beneficiary, as “Local Agency Operations & Maintenance Work” in Reference Document 29.11.01 and as “Planning Area 2” in the I-70 Cover Plans; b. with respect to Denver Public Schools as a “Warranty Beneficiary, as “Planning Area 1” in the I-70 Cover Plans; and c. with respect to CDOT as a Warranty Beneficiary, as “Department Operations & Maintenance Work” in Reference Document 29.11.01.
<u>“Warranties”</u>	has the meaning given to it in the Project Agreement.
<u>“Warranty Beneficiaries”</u>	has the meaning given to it in Part 2, <u>Section 9.4.2.a.</u>
<u>“Warranty Defects List”</u>	has the meaning given to it in the Project Agreement.
<u>“Warranty Period”</u>	has the meaning given to it in the Project Agreement.
<u>“Weekend”</u>	means the 48 hour period commencing on a Saturday at 12.00am and ending on the next Sunday at 11.59pm.
<u>“WDP”</u>	has the meaning given to it in <u>Section 5.1</u> of <u>Schedule 15</u> (<i>Federal and State Requirements</i>).
<u>“Work Product”</u>	means any document, drawing, report, plan, application, data, work product or other material or information, regardless of form, and including any draft specifically developed by the O&M Contractor under the terms of this Agreement on or after the Agreement Date (and excluding, for certainty, any Proprietary Intellectual Property and any Third Party Intellectual Property incorporated therein).
<u>“Workforce Development</u>	has the meaning given to it in <u>Section 6.3</u> of <u>Schedule 15</u> (<i>Federal and State</i>

Goals"

Requirements).

"Working Day"

means any Calendar Day that is not a Saturday, a Sunday or Holiday.

Part B: Abbreviations

Except as otherwise specified herein or as the context may otherwise require, the following abbreviations set out below are provided as references for purposes of the Technical Requirements, Table 6A.1 and Table 6A.2 only:

<u>"ABC"</u>	means aggregate base course.
<u>"AC"</u>	means alternating current.
<u>"ACL"</u>	means access control list.
<u>"ADA"</u>	means Americans with Disabilities Act.
<u>"AID"</u>	means automatic incident detection.
<u>"AHJ"</u>	means Authority Having Jurisdiction.
<u>"ALPR"</u>	means Automatic License Plate Recognition.
<u>"AMCA"</u>	means Air Movement and Control Association.
<u>"ANSI"</u>	means American National Standards Institute.
<u>"APCD"</u>	means Air Pollution Control Division.
<u>"APEN"</u>	means Air Pollution Emission Notice.
<u>"AREMA"</u>	means American Railway Engineering and Maintenance-of-Way Association.
<u>"ATM"</u>	means Active Traffic Management.
<u>"ATR"</u>	means Automatic Traffic Recorders.
<u>"AVI"</u>	means Automatic Vehicle Identification.
<u>"AVL"</u>	means Automated Vehicle Locator.
<u>"BACR"</u>	means Baseline Asset Condition Report.
<u>"BMP"</u>	means Best Management Practices.
<u>"BRMMP"</u>	means Beneficial Reuse and Materials Management Plan.
<u>"CCD"</u>	means City and County of Denver.
<u>"CCMS"</u>	means Command, Control, and Monitoring System.
<u>"CCP"</u>	means Crisis Communications Plan.
<u>"CCTV"</u>	means Closed Circuit Television.
<u>"CDPHE"</u>	means Colorado Department of Public Health and Environment.
<u>"CDPS"</u>	means Colorado Discharge Permit System.
<u>"CDPS-SCP"</u>	means Colorado Discharge Permit System-Stormwater Construction Permit.
<u>"CFD"</u>	means Computational Fluid Dynamics Model.
<u>"CLOMR"</u>	means Conditional Letter of Map Revision.
<u>"CMS"</u>	means cable management system.
<u>"COTS"</u>	means conventional, off-the-shelf.
<u>"CPCM"</u>	means Construction Process Control Manager.
<u>"CPM"</u>	means Critical Path Method.
<u>"CPW"</u>	means Colorado Parks and Wildlife.
<u>"CSL"</u>	means cross sonic log.
<u>"CSP"</u>	means Colorado State Patrol.
<u>"CTMC"</u>	means Colorado Transportation Management Center.
<u>"CTMS"</u>	means Colorado Transportation Management Software.
<u>"CUHP/EPA-SWMM"</u>	means Colorado Urban Hydrograph Procedure/Environmental Protection Agency Storm Water Management Model.
<u>"CWCF"</u>	means Construction Work Communications Plan.
<u>"CWDM"</u>	means coarse wavelength division multiplexing.
<u>"CVS"</u>	means Cover Ventilation System.
<u>"DBE"</u>	means Disadvantaged Business Enterprise.
<u>"DCS"</u>	means Document Control System.
<u>"DPCM"</u>	means Design Process Control Manager.
<u>"DRIRR"</u>	means Denver Rock Island Railroad.
<u>"DTD"</u>	means Division of Transportation Development.
<u>"DWDM"</u>	means dense wavelength division multiplexing.
<u>"ECS"</u>	means Erosion Control Supervisor.
<u>"ECWP"</u>	means Environmental Compliance Work Plan.
<u>"EDB"</u>	means extended detention basins.

<u>“EDP”</u>	means electrical distribution panels.
<u>“EIS”</u>	means Environmental Impact Statement.
<u>“EM”</u>	means Environmental Manager.
<u>“EPA”</u>	means Environmental Protection Agency.
<u>“ERP”</u>	means Emergency Response Plan.
<u>“ESAL”</u>	means 18-kip Equivalent Single Axle Loads.
<u>“ESB”</u>	means Emerging Small Business.
<u>“ETC”</u>	means Electronic Toll Collection.
<u>“FCM”</u>	means fracture critical member.
<u>“FDAS”</u>	means Fire Detection and Alarm System.
<u>“FDS”</u>	means Functional Design Specification.
<u>“FEE”</u>	means Fee interest or ownership of the fee simple estate in real property.
<u>“FFFS”</u>	means Fixed Firefighting System.
<u>“FMV”</u>	means Fair Market Value.
<u>“GUI”</u>	means graphical user interface.
<u>“GPS”</u>	means Global Positioning System.
<u>“HBP”</u>	means hot bituminous pavement.
<u>“HDPE”</u>	means high-density polyethylene.
<u>“HGL”</u>	means hydraulic grade line.
<u>“HLMR”</u>	means high load multi-rotational.
<u>“HMA”</u>	means hot mix asphalt.
<u>“HOV”</u>	means high occupancy vehicle.
<u>“HVAC”</u>	means heating, ventilation, and air conditioning.
<u>“IA”</u>	means Independent Assurance.
<u>“IAR”</u>	means Interstate Access Request.
<u>“IBC”</u>	means International Building Code.
<u>“IDQM”</u>	means Independent Design Quality Manager.
<u>“IESNA”</u>	means Illumination Engineering Society North America.
<u>“IGMP”</u>	means Internet Group Management Protocol.
<u>“IMP”</u>	means Incident Management Plan.
<u>“IQC”</u>	means Independent Quality Control, which for certainty is the same as “ICQC” as defined in the CDOT Field Materials Manual.
<u>“IQCF”</u>	means the Independent Quality Control firm or function group, as described in Section 6.2.5.b of Schedule 8 (<i>Project Administration</i>) to the Project Agreement.
<u>“IQCM”</u>	means Independent Quality Control Manager.
<u>“INWMP”</u>	means Integrated Noxious Weed Management Plan.
<u>“IP”</u>	means Internet Protocol.
<u>“IRI”</u>	means International Roughness Index.
<u>“ISO”</u>	means International Organization for Standardization.
<u>“ITS”</u>	means Intelligent Transportation Systems.
<u>“IVR”</u>	means Interactive Voice Response.
<u>“LCD”</u>	means Liquid Crystal Display.
<u>“LED”</u>	means light emitting diode.
<u>“LEP”</u>	means Limited English Proficient.
<u>“LFD”</u>	means load factor design.
<u>“LFR”</u>	means a load factor rating.
<u>“LOMR”</u>	means Letter of Map Revision.
<u>“LP”</u>	means Lighting Protection.
<u>“LRFD”</u>	means load resistance factor design.
<u>“LRFR”</u>	means aggregate base course.
<u>“LSOH”</u>	means low smoke, zero halogen.
<u>“LUS”</u>	means Lane Use Signal.
<u>“M-E”</u>	means mechanistic-empirical.
<u>“MBTA”</u>	means Migratory Bird Treaty Act.
<u>“MEP”</u>	means mechanical, electrical, and plumbing.
<u>“MHCP”</u>	means Mile High Courtesy Patrol.

<u>"MHT"</u>	means Methods of Handling Traffic.
<u>"MMP"</u>	means Materials Management Plan (in the context of Construction Work, and otherwise as the context may provide).
<u>"MMP"</u>	means Maintenance Management Plan (in the context of O&M Work).
<u>"MMIS"</u>	means Maintenance Management Information System.
<u>"MOCP"</u>	means Maintenance and Operations Communications Plan.
<u>"MOT"</u>	means maintenance of traffic.
<u>"MVRD"</u>	means Microwave Vehicle Radar Detection.
<u>"MS4"</u>	means Municipal Separate Storm Sewer System.
<u>"MSE"</u>	means mechanically stabilized earth.
<u>"MTIP"</u>	means Materials Testing and Inspection Plan.
<u>"MW"</u>	means megawatts.
<u>"NCN"</u>	means Nonconformance Notice.
<u>"NCHRP"</u>	means National Cooperative Highway Research Program.
<u>"NCR"</u>	means Nonconformance Report.
<u>"NDRD"</u>	means New Development Redevelopment.
<u>"NEC"</u>	means National Electric Code.
<u>"NEPA"</u>	means the National Environmental Policy Act.
<u>"NFPA"</u>	means National Fire Protection Association.
<u>"NIOSH"</u>	means National Institute for Occupational Safety and Health.
<u>"NIST"</u>	means National Institute of Standards and Technology.
<u>"NSBA"</u>	means National Steel Bridge Alliance.
<u>"NTCIP"</u>	means National Transportation Communications for ITS Protocol.
<u>"NTP"</u>	means Notice to Proceed.
<u>"O&M"</u>	means Operations and Maintenance.
<u>"OCR"</u>	means Optical Character Recognition.
<u>"OJT"</u>	means On the Job Training.
<u>"OMP"</u>	means Operations Management Plan.
<u>"OMQMP"</u>	means O&M Quality Management Plan.
<u>"OTIS"</u>	means Online Transportation Information System.
<u>"PA"</u>	means Public Address.
<u>"PC"</u>	means Process Control.
<u>"PCCP"</u>	means Portland cement concrete pavement.
<u>"PCM"</u>	means Project Communications Manager.
<u>"PDA"</u>	means Pile Driving Analyzer.
<u>"PE"</u>	means Permanent Easement.
<u>"PIARC"</u>	means Permanent International Association of Road Congresses.
<u>"PIP"</u>	means Public Information Plan.
<u>"PLC"</u>	means programmable logic controller.
<u>"PoE"</u>	means Power over Ethernet.
<u>"PMP"</u>	means Project Management Plan.
<u>"PNS"</u>	means Pacific Northwest Snow Fighters.
<u>"POSS"</u>	means Point of Slope Selection.
<u>"PQM"</u>	means Project Quality Manager.
<u>"PSQF"</u>	means Permanent Stormwater Quality Facilities.
<u>"PTFE"</u>	means polytetrafluoroethylene.
<u>"PTI"</u>	means Post-Tensioning Institute.
<u>"PUC"</u>	means Public Utility Commission.
<u>"PVC"</u>	means polyvinyl chloride.
<u>"QC"</u>	means Quality Control.
<u>"QMP"</u>	means Quality Management Plan.
<u>"QMS"</u>	means Quality Management System.
<u>"QRD"</u>	means Quality Records Database.
<u>"RAP"</u>	means Recycled Asphalt Pavement.
<u>"REC"</u>	means Recognized Environmental Condition.
<u>"RFC"</u>	means Release for Construction.

<u>"RFP"</u>	means Request for Proposals.
<u>"RHM"</u>	means Recognized Hazardous Material.
<u>"ROD"</u>	means Record of Decision.
<u>"ROW"</u>	means Right-of-Way.
<u>"RPM"</u>	means Reflective Pavement Markers.
<u>"RTD"</u>	means Regional Transportation District.
<u>"RTK"</u>	means Real Time Kinematic.
<u>"RTM"</u>	means Requirements Traceability Matrix.
<u>"RWIS"</u>	means Road Weather Information System.
<u>"SAP"</u>	means Sampling Analysis Plan.
<u>"SB"</u>	means Colorado Senate Bill.
<u>"SCADA"</u>	means Supervisory Control and Data Acquisition.
<u>"SCP"</u>	means Stormwater Construction Permit.
<u>"SFP"</u>	means small form-factor pluggable.
<u>"SMA"</u>	means stone matrix asphalt.
<u>"SMFO"</u>	means Single-Mode Fiber Optic.
<u>"SMP"</u>	means Safety Management Plan.
<u>"SMVMS"</u>	means Side Mounted Variable Message Signs.
<u>"SOLIT"</u>	means Safety of Life in Tunnels.
<u>"SOV"</u>	means single occupancy vehicle.
<u>"SPCC"</u>	means Spill Prevention Control and Countermeasures.
<u>"TCP"</u>	means Temporary Traffic Control Plan.
<u>"TDC"</u>	means Traffic Data Collection Unit.
<u>"TDM"</u>	means Travel Demand Management.
<u>"TE"</u>	means Temporary ROW Easement.
<u>"TMOSS"</u>	means Terrain Modeling Survey System.
<u>"TMP"</u>	means Transportation Management Plan.
<u>"TOP"</u>	means Transportation Operations Plan.
<u>"TSS"</u>	means total suspended solids.
<u>"TTI"</u>	means Travel Time Indicators.
<u>"UBC"</u>	means Uniform Building Code.
<u>"UDFCD"</u>	means Urban Drainage and Flood Control District.
<u>"UE"</u>	means Utility easements.
<u>"UNCC"</u>	means Utility Notification Center of Colorado.
<u>"UPRR"</u>	means Union Pacific Railroad.
<u>"UPS"</u>	means Uninterruptible Power Supply.
<u>"URA"</u>	means Utility Relocation Agreement.
<u>"USFWS"</u>	means U.S. Fish and Wildlife Service.
<u>"VA"</u>	means Voice Alarm.
<u>"VCS"</u>	means ventilation control system.
<u>"VFD"</u>	means Vacuum Fluorescent Display.
<u>"VMS"</u>	means Variable Message Sign.
<u>"VTMS"</u>	means Variable Toll Message Sign.
<u>"WDP"</u>	means Workforce Development Plan.
<u>"WQCV"</u>	means Water Quality Capture Volume.

Schedule 1
Intentionally Omitted

Schedule 2
Representations and Warranties

Part A: Representations and Warranties of O&M Contractor

- (a) **Organization; Power and Authority.** The O&M Contractor:
- (i) is a corporation, duly incorporated, validly existing and in good standing in accordance with the laws of the State of Delaware;
 - (ii) is authorized to transact business in, and is registered with the Secretary of State in, the State; and
 - (iii) has the corporate power and authority to:
 - (A) transact the business that it transacts and proposes to transact pursuant to the this Agreement; and
 - (B) execute, deliver and perform this Agreement and each other O&M Project Document (collectively, the “O&M Contractor Agreements”).
- (b) **Authorization and Due Execution.**
- (i) Each Person executing any O&M Contractor Agreement on behalf of the O&M Contractor has been (or, at the time of execution, will have been) duly authorized to execute and deliver such document on behalf of the O&M Contractor.
 - (ii) The execution, delivery and performance of each O&M Contractor Agreement by the O&M Contractor has otherwise been duly authorized by all necessary corporate action of the O&M Contractor.
 - (iii) Each O&M Contractor Agreement has been (or, at the time of execution and delivery, will have been) duly and validly executed and delivered by the O&M Contractor.
- (c) **Enforceability.** Each O&M Contractor Agreement constitutes (or, at the time of execution and delivery, will constitute) a legal, valid and binding obligation of the O&M Contractor, enforceable against the O&M Contractor and, in accordance with its terms, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and general principles of equity.
- (d) **No Conflicts.** The execution, delivery and performance by the O&M Contractor of any O&M Contractor Agreement does not and will not contravene any:
- (i) Law applicable to the O&M Contractor that is in effect on the date of execution and delivery of each O&M Contractor Agreement;
 - (ii) organizational, corporate or other governing documents of the O&M Contractor; or
 - (iii) agreement, instrument, Governmental Approval, judgment or decree to which the O&M Contractor is a party or is bound.
- (e) **Consents and Approvals.**
- (i) Prior to the Agreement Date, the O&M Contractor familiarized itself with the requirements of any and all Laws, including Laws applicable to the use of Federal funds, and the conditions of any Governmental Approvals or Permits necessary to perform its obligations under this Agreement at the time and in the manner required.
 - (ii) As of the date on which this representation and warranty is given or repeated, the O&M Contractor has acquired any and all Governmental Approvals and Permits:
 - (A) that the O&M Contractor is required to obtain pursuant to this Agreement; and
 - (B) that are necessary to perform those of its obligations under this Agreement that fall due for performance on or immediately following such date such that the

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Schedule 2 (Representations and Warranties)

O&M Contractor is not and will not be in breach of Part 2, Section 8.4.2.a. of this Agreement,

and, as of such date, all such Governmental Approvals and Permits are in full force and effect.

- (iii) The O&M Contractor has no reason to believe that any Governmental Approval or Permit that the O&M Contractor is required to obtain pursuant to this Agreement will not be granted in due course and thereafter remain in effect so as to enable the O&M Work After Construction to proceed in accordance with this Agreement.
- (f) **O&M Contractor Default.** No O&M Contractor Default has occurred and is continuing, and no fact or event exists that with the passage of time or giving of notice would constitute a O&M Contractor Default.
- (g) **Applicable Law.** The O&M Contractor is not in breach of any Law that would have a material adverse effect on the O&M Work After Construction or the performance of any of its obligations under the O&M Contractor Agreements.
- (h) **Due Diligence; Reasonable Investigation.**
 - (i) The statements set out in Part 2, Sections 3.1.a, 3.1.b and 3.2.1 of this Agreement are true and accurate.
 - (ii) On the basis of:
 - (A) the due diligence conducted by the O&M Contractor and the other O&M Contractor-Related Entities as referred to in Part 2, Sections 3.1.b and 3.2.1 of this Agreement; and
 - (B) subsequent such diligence of the Project, the Project Information and the Site as has been conducted by the O&M Contractor,and taking into account the terms of the O&M Contract and the O&M Contractor's rights thereunder, the O&M Contractor:
 - (C) is familiar with and accepts the requirements of the O&M Work After Construction;
 - (D) has evaluated all the constraints affecting the operation and maintenance of the Project and has reasonable grounds for believing and believes that the Project can be operated and maintained within such constraints; and
 - (E) has obtained for itself all necessary information regarding the risks, contingencies and other circumstances which may influence or affect its ability to perform its obligations under this Agreement and any other factors which would affect its decision to enter into this Agreement or the terms on which it would do so.
- (i) **Intentionally Omitted.**
- (j) **Legal Proceedings.** There is no:
 - (i) criminal, civil, enforcement or other action, suit, proceeding, investigation or litigation pending or served on or against the O&M Contractor that:
 - (A) challenges the O&M Contractor's authority to execute, deliver or perform any O&M Contractor Agreement;
 - (B) challenges the validity or enforceability of any O&M Contractor Agreement;
 - (C) challenges the authority of any O&M Contractor representative executing any O&M Contractor Agreement; or

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Schedule 2 (Representations and Warranties)

- (D) could reasonably be expected to have a material and adverse effect on the ability of the O&M Contractor to perform its obligations under any O&M Contractor Agreement; and
 - (ii) un-served or threatened action, suit, proceeding, investigation or litigation against the O&M Contractor with respect to any of the matters referred to in paragraphs (j)(i)(A) to (D) of this Part A of which the O&M Contractor is aware and has not previously disclosed in writing to the Developer.
- (k) **Prohibited Acts.** The O&M Contractor has not, and, to the best of O&M Contractor's knowledge and belief (the O&M Contractor having made reasonable enquiries with a view to obtaining such knowledge and belief) no O&M Contractor-Related Entity has, committed any Prohibited Act.
- (l) **Organizational Conflicts of Interest.** As of the Financial Proposal Deadline, the O&M Contractor disclosed to the Developer in writing all Organizational Conflicts of Interest of which the O&M Contractor was aware and, since such date, the O&M Contractor has not obtained knowledge (the O&M Contractor having made reasonable inquiries with a view to obtaining such knowledge) of any additional Organizational Conflict of Interest, and there have been no Organizational Changes or Key Personnel Changes (as such terms are defined in the ITP) to or by the O&M Contractor or its Subcontractors identified in the Developer's Proposal which require approval by the Enterprises pursuant to the terms of the ITP and have not been so approved.
- (m) **Debarment.** None of the O&M Contractor, any of its principals or any of its Subcontractors are presently disqualified, suspended or debarred from bidding, proposing or contracting with any state-level, interstate or Federal Governmental Authority. For purposes of this representation and warranty, the term "principal" means an officer, director, equity member or other direct or indirect owner, partner, Key Personnel, employee or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the O&M Contractor.
- (n) **Intentionally Omitted.**
- (o) **O&M Contractor.** As of the effective date of this Agreement:
 - (i) the O&M Contractor has the power and authority to do all acts and things and execute and deliver all other documents as are required to be done, observed or performed by it in connection with its engagement by Developer;
 - (ii) the O&M Contractor has:
 - (A) obtained or will obtain and will maintain all necessary or required registrations, permits, licenses and approvals required under applicable law; and
 - (B) the expertise, qualifications, experience, competence, skills and know-how to perform, in accordance with the Project Agreement and this Agreement, the O&M Activities;
 - (iii) this Agreement is in compliance with, and as applicable incorporates the terms set out in, Part A of Schedule 16 to the Project Agreement; and
 - (iv) no default under this Agreement has occurred and is continuing, and no fact or event exists that with the passage of time or giving of notice would constitute such a default.

Part B: Representations and Warranties of the Developer

- (a) **Power and Authority.** The Developer:
- (i) is a limited liability company, duly organized, validly existing and in good standing in accordance with the laws of the State of Delaware;
 - (ii) is authorized to transact business in, and is registered with the Secretary of State in, the State; and
 - (iii) has the limited liability company power and authority to:
 - (A) transact the business that it transacts and proposes to transact pursuant to the this Agreement; and
 - (B) execute, deliver and perform this Agreement and the Interface Agreement (collectively, the “Developer Agreements”).
- (b) **Authorization and Due Execution.**
- (i) Each person executing any Developer Agreement on behalf of the Developer has been (or, at the time of execution, will have been) duly authorized to execute and deliver such Developer Agreement on behalf of the Developer.
 - (ii) The execution, delivery and performance of each Developer Agreement has otherwise been duly authorized by the Developer.
 - (iii) Each Developer Agreement has been (or will be) duly and validly executed and delivered by the Developer.
- (c) **Enforceability.** Each Developer Agreement constitutes (or, at the time of execution and delivery, will constitute) a legal, valid and binding obligation of the Developer enforceable against it in accordance with its terms as such terms separately apply to the Developer, except to the extent limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforceability of the rights of creditors generally, by general principles of equity, by the exercise by the State and its governmental bodies of the police power inherent in the sovereignty of the State and by the exercise by the United States of the powers delegated to it by the Constitution of the United States.
- (d) **No Conflicts.** The execution and delivery by the Developer of the Developer Agreements has not resulted in, and the performance thereof by the Developer will not result in:
- (i) a breach of, default under or a violation of any agreement, instrument, judgment or decree to which the Developer is a party or is bound; or
 - (ii) a violation of any Law applicable to the Developer that is in effect on the date of execution and delivery of each Developer Agreement.
- (e) **Consents and Approvals.** As of the date on which this representation and warranty is given or repeated, no consent of any party and no Governmental Approval which has not already been obtained is required, as of such date, to have been obtained in connection with the execution, delivery and performance of any Developer Agreement by the Developer.
- (f) **Developer Default.** No Developer Default has occurred and is continuing, and no fact or event exists that with the passage of time or giving of notice would constitute a Developer Default.
- (g) **Applicable Laws.** The Developer is not in breach of any Law that would have a material adverse effect on the performance of any of its obligations under any Developer Agreement.
- (h) **Legal Proceedings.** There is no action, suit, proceeding, investigation or litigation is pending or overtly threatened in writing:
- (i) that challenges:
 - (A) the Developer’s authority to execute, deliver or perform;

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- (B) the legality, validity or enforceability of, as against the Developer; or
 - (C) the authority of any representative of the Developer executing,
- in each case, any of the Developer Agreements; or
- (ii) that could reasonably be expected to have a material and adverse effect on the ability of the Developer to perform its obligations under this Agreement.
- (i) **Intentionally Omitted.**

Part C: Intentionally Omitted.

Schedule 3
Commencement and Completion Mechanics
Part 1: Intentionally Omitted

Part 2: Intentionally Omitted

Part 3: Intentionally Omitted

Part 4: Intentionally Omitted

Part 5: Substantial Completion

1. On or before the date that is one hundred eighty (180) days prior to the Anticipated Substantial Completion Date, the O&M Contractor will satisfy the following conditions required for the Developer to achieve Substantial Completion under the Project Agreement (each a "Substantial Completion Condition"):
 - (a) Intentionally Omitted;
 - (b) Intentionally Omitted;
 - (c) Intentionally Omitted;
 - (d) The O&M Contractor shall have provided the Developer with a written certificate, in form and substance reasonably acceptable to the Developer, that no Closures are required or expected during the Operating Period other than (i) Excused Closures and (ii) Permitted Operating Period Closures;
 - (e) Intentionally Omitted;
 - (f) Intentionally Omitted;
 - (g) The O&M Contractor shall have delivered to the Developer the Contractor Bonds as required pursuant to Section 9.3.1.a.ii of the Project Agreement;
 - (h) the Developer shall have Approved any updates:
 - (i) that the O&M Contractor has submitted to the Developer pursuant to Section 4.2.6 of Schedule 11 (*Operations and Maintenance Requirements*); and
 - (ii) to the Performance and Measurement Table set out in Appendix A-2 to Schedule 11 (*Operations and Maintenance Requirements*);
 - (i) Intentionally Omitted;
 - (j) Intentionally Omitted;
 - (k) Intentionally Omitted;
 - (l) Intentionally Omitted;
 - (m) if any Governmental Authority, Railroad or Utility Owner with jurisdiction over any portion of the Project requires any form of certification of design, engineering or construction with respect to such portion with respect to the O&M Work After Construction, including any certifications or approvals required under any Permit or Governmental Approval, the O&M Contractor shall have caused such certificates or approvals to be executed and delivered and shall have concurrently provided copies of such certificates or approvals to the Developer;
 - (n) the O&M Contractor shall have submitted each Deliverable that applies to the O&M Activities which is identified as being required to be submitted prior to issuance of Substantial Completion either (x) in the "Schedule" column in any of the Deliverables Tables or (y) any other part of this Agreement and:
 - (i) if Acceptance, Approval or other consent, approval or like assent of any such Deliverable is required as indicated in the Deliverables Tables or otherwise by the express terms of this Agreement, the O&M Contractor shall have received such Acceptance, Approval or other consent, approval or like assent as applicable, of each such Deliverable; and
 - (ii) if any such Deliverable is required to be submitted for Information as indicated in the Deliverables Tables, the initial review period as determined pursuant to Section 6(a) of Schedule 9 (*Submittals*) shall have expired with respect to each such Deliverable;

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Schedule 3 (Commencement and Completion Mechanics)

- (o) Intentionally Omitted.
 - (p) with respect to all O&M Insurance Policies that are required by Section 25 and Schedule 13 (*Required Insurances*) to be in effect on and from the Substantial Completion Date:
 - (i) such policies shall have been obtained from Eligible Insurers on terms that comply with Section 25 and Schedule 13 (*Required Insurances*) and shall be in full force and effect; and
 - (ii) the Developer shall have received binding verifications of coverage from the relevant insurers (or the O&M Contractor's insurance brokers) of such O&M Insurance Policies, in compliance with Part 2, Section 25.3.1 of this Agreement as Accepted by the Developer;
 - (q) Intentionally Omitted;
 - (r) Intentionally Omitted; and
 - (s) the O&M Contractor shall have satisfied all the conditions that are required by the terms of this Agreement in order for Developer to achieve Substantial Completion.
2. Intentionally Omitted.
 3. Intentionally Omitted.
 4. Intentionally Omitted.
 5. Intentionally Omitted.
 6. Intentionally Omitted.

Part 6: Final Acceptance

1. On or before the date that is one hundred twenty (120) days prior to the expected Final Acceptance Date, the O&M Contractor will satisfy the following conditions required for the Developer to achieve Final Acceptance under the Project Agreement (each a “Final Acceptance Condition”):
 - (a) Intentionally Omitted;
 - (b) Intentionally Omitted;
 - (c) Intentionally Omitted;
 - (d) the O&M Contractor shall have provided the Developer with a written certificate, in form and substance reasonably acceptable to the Developer, that no Closures are required or expected during the Operating Period other than (i) Excused Closures and (ii) Permitted Operating Period Closures;
 - (e) Intentionally Omitted;
 - (f) Intentionally Omitted;
 - (g) Intentionally Omitted;
 - (h) Intentionally Omitted;
 - (i) the O&M Contractor shall have submitted each Deliverable that applies to the O&M Activities which is identified as being required to be submitted prior to issuance of Final Acceptance in either (x) the “Schedule” column in any of the Deliverables Tables or (y) any other part of this Agreement and:
 - (i) if Acceptance, Approval or other consent, approval or like assent of any such Deliverable is required as indicated in the Deliverables Tables or otherwise by the express terms of this Agreement, the O&M Contractor shall have received such Acceptance, Approval or other consent, approval or like assent as applicable, of each such Deliverable; and
 - (ii) if any such Deliverable is required to be submitted for Information as indicated in the Deliverables Tables, the initial review period as determined pursuant to Section 6(a) of Schedule 9 (Submittals) shall have expired with respect to each such Deliverable;
 - (j) no O&M Contractor Default shall have occurred and be continuing; and
 - (k) the O&M Contractor shall have satisfied any other requirements and conditions that are required by the terms of this Agreement to have been satisfied prior to Final Acceptance.
2. Intentionally Omitted.
3. Intentionally Omitted.
4. Intentionally Omitted.
5. Intentionally Omitted.
6. Intentionally Omitted.

Part 7: Intentionally Omitted

**Schedule 4
Payments**

Part 1: Intentionally Omitted

Part 2: Operating Period

1. Payments to O&M Contractor

- 1.1 The Developer shall pay the O&M Mobilization Fee to the O&M Contractor in accordance with Part 1, Article 12.1.
- 1.2 The Developer shall pay the O&M Fee (calculated in accordance with Part 2 of Schedule 6 (*Performance Mechanism*)) to the O&M Contractor for each Payment Month in accordance with Section 2 of this Part 2.

2. Payment Requests

- 2.1 No later than the fifth Working Day in each Payment Month (other than the first Payment Month if the Substantial Completion Date occurs after the tenth Working Day of such month), the O&M Contractor shall submit an invoice dated as of the fifth Working Day following the end of the previous Payment Month (an "O&M Payment Application") for the O&M Fee payable in respect of such previous Payment Month, together with a Monthly Deductions Report in accordance with Section 3 of this Part 2.
- 2.2 If the Substantial Completion Date occurs after the tenth Working Day of the First Payment Month, the O&M Contractor shall submit a separate O&M Payment Application for the O&M Fee payable in respect of the First Payment Month at the same time as, pursuant to Section 2.1 of this Part 2, it submits an O&M Payment Application for the O&M Fee payable in respect of the second Payment Month.
- 2.3 Each O&M Payment Application shall set out:

- (a) (i) the amount of the O&M Fee due with respect to such Payment Month, and (ii) the annual O&M Fee and each component thereof as calculated for the then-current Contract Year, together with the accumulated payments for each component to the date of such invoice;
- (b) the calculation of the amount of the Routine O&M Work ESB Goal deduction in respect of the relevant Payment Month as calculated in accordance with Section 1(c) of Part 2 of Schedule 6 (*Performance Mechanism*);
- (c) the Agreed or Determined amount of any Monthly Noncompliance Deductions and/or Operating Period Closure Deductions that accrued in any month prior to the relevant Payment Month which have not been reflected in any prior O&M Payment Application (including as a result of the accrual or amount thereof having been in dispute);
- (d) Intentionally Omitted;
- (e) Intentionally Omitted;
- (f) any other amounts due under this Agreement from the O&M Contractor to the Developer or from the Developer to the O&M Contractor and not previously included in an O&M Payment Application;
- (g) any adjustments to reflect over-payments and/or under-payments (each such adjustment stated separately) of any amount due prior to the relevant Payment Month (for which adjustment has not already been made);
- (h) any interest payable by the Developer or the O&M Contractor in respect of any amount that previously became payable to, respectively, the O&M Contractor or the Developer and not previously included in an O&M Payment Application;
- (i) the net amount owing to the O&M Contractor by the Developer or by the O&M Contractor to the Developer in respect of the relevant Payment Month; and
- (j) such other documentation or information as the Developer may reasonably require to determine the accuracy and appropriateness of the invoice in accordance with this Agreement.

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- 2.4 Each O&M Payment Application shall be accompanied by:
- (a) work papers clearly setting out the derivation of all amounts set out in the O&M Payment Application to the extent not detailed in the Monthly Deductions Report submitted at the same time as such O&M Payment Application; and
 - (b) lien waivers duly executed by:
 - (i) the O&M Contractor;
 - (ii) all Subcontractors that performed O&M Activities during the relevant Payment Month; and
 - (iii) if the Developer in its discretion elected to pay the amount of the O&M Payment Application submitted in respect of any previous Payment Month notwithstanding the failure by the O&M Contractor to have delivered a lien waiver that complies with the requirements of this Section 2.4(b) from any applicable Subcontractor,
- all of which waivers shall be in the form required by the applicable provisions of Section 6 of Part 3 of this Schedule 4.
- 2.5 The Developer shall notify the O&M Contractor in writing (with reasons and any supporting documentation available to the Developer) within 15 Working Days of receipt of any Monthly Deductions Report or O&M Payment Application if there is any part of such report or O&M Payment Application which the Developer disputes, provided that a failure by the Developer to notify the O&M Contractor of a Dispute within such period shall not constitute a waiver of their rights to do so at a later date. To the extent that Developer's objection arises from a dispute by the Enterprises of any item reflected in a Payment Request (as defined in the Project Agreement) submitted by the Developer pursuant to Part 2 of Schedule 4 to the Project Agreement, and such item relates to an O&M Payment Application submitted by the O&M Contractor, the Developer shall notify the O&M Contractor and the O&M Contractor shall either submit an updated O&M Payment Application resolving the point at issue, or request that the Developer bring a Claim pursuant to the Requested Dispute Procedures.
- 2.6 The Developer shall pay the O&M Contractor within 10 Calendar Days of the receipt of a corresponding payment from the Enterprises for the O&M Work related to such O&M Payment pursuant to Part 2 of Schedule 4 to the Project Agreement.
- 2.7 If:
- (a) the Parties agree or it is determined pursuant to the Dispute Resolution Procedures that any Monthly Deductions Report and/or O&M Payment Application was incorrect or inaccurate, then the O&M Contractor shall be required to submit a corrected report and/or O&M Payment Application, as the case may be; or
 - (b) the inaccuracy was identified or the Dispute resolved after the payment of the amount set out in the O&M Payment Application affected by such inaccuracy, the necessary adjustment(s) shall be reflected, as appropriate, in the next Monthly Deductions Report and/or O&M Payment Application to be submitted to the Developer after the Parties reach agreement or the Dispute is resolved.
- 2.8 In no event shall the Developer be obligated to pay interest on any late payments arising due to any such inaccuracies.
- 2.9 Intentionally Omitted.
3. **Monthly Deductions Reports**
- 3.1 Each O&M Payment Application shall be accompanied by a report that complies with the requirements of Section 3.2 of this Part 2.
- 3.2 Each Monthly Deductions Report required to be submitted to the Developer pursuant to Section 3.1 of this Part 2 shall be in a form agreed by the Parties (acting reasonably) and shall contain the following information in relation to (unless expressly provided otherwise in this

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Section 3.2) the month that immediately precedes the month in which such Monthly Deductions Report is required to be submitted (in the case of each such Monthly Deductions Report, such preceding month, the "OP Deduction Month"):

- (a) details of:
 - (i) each O&M Noncompliance Event (including the nature of such event, its Noncompliance Start Time and, if such time has occurred at the date of such report, its Noncompliance Rectification Time) that accrued O&M Noncompliance Points in the OP Deduction Month in accordance with Table 6A.2 and Part 4 of Schedule 6 (*Performance Mechanism*); and
 - (ii) the number of such O&M Noncompliance Points that accrued in respect of each such O&M Noncompliance Event (including details of how such number was calculated),

provided that, for certainty, in relation to any such O&M Noncompliance Event that occurred in (A) a month prior to the OP Deduction Month but which continued to subsist during the OP Deduction Month or (B) the OP Deduction Month but which continued to subsist after the end of the OP Deduction Month, the number of O&M Noncompliance Points reported pursuant to this Section 3.2(a) shall be solely the number that accrued in the OP Deduction Month in accordance with Section 3 of Part 4 of Schedule 6 (*Performance Mechanism*);

- (b) the aggregate number of O&M Noncompliance Points that accrued in the OP Deduction Month in respect of all O&M Noncompliance Events in accordance with Table 6A.2 and Part 4 of Schedule 6 (*Performance Mechanism*);
- (c) the calculation of the Monthly Noncompliance Deduction for the OP Deduction Month;
- (d) the cumulative total of Monthly Noncompliance Deductions for all months up to and including the OP Deduction Month;
- (e) details of:
 - (i) each Non-Permitted Operating Period Closure (including the cause thereof, its start time and, if such time has occurred at the date of such report, its end time) that resulted in the accrual of one or more Operating Period Closure Deductions in the OP Deduction Month in accordance with Section 3 of Part 3 of Schedule 6 (*Performance Mechanism*) and Part 5 of Schedule 6 (*Performance Mechanism*); and
 - (ii) the amount of such Operating Period Closure Deductions that accrued in respect of each such Operating Period Closure Event in the OP Deduction Month (including details of how such amount was calculated),

provided that, for certainty, in relation to any Non-Permitted Operating Period Closure that commenced (A) in a month prior to the OP Deduction Month but which continued to subsist during the OP Deduction Month or (B) in the OP Deduction Month but which continued to subsist after the end of the OP Deduction Month, the amount of Operating Period Closure Deductions reported pursuant to this Section 3.2(e) shall be solely the amount that accrued in the OP Deduction Month in accordance with Section 1.2 of Part 5 of Schedule 6 (*Performance Mechanism*);

- (f) the calculation of the Monthly Operating Period Closure Deduction for the OP Deduction Month;
- (g) the cumulative total of Monthly Operating Period Closure Deductions for all months up to and including the OP Deduction Month;
- (h) the calculation of the Monthly Performance Deduction for the OP Deduction Month, being the aggregate of the amounts referred to in Sections 3.2(c) and (f) of this Part 2;

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- (i) the cumulative total of Monthly Performance Deductions for all months up to and including the OP Deduction Month, being the aggregate of the amounts referred to in Sections 3.2(d) and (g) of this Part 2;
- (j) sufficient information to evidence whether:
 - (i) either of the Noncompliance Default Events specified in paragraph b.i or b.ii of the definition thereof in Part A of Annex A (Definitions and Abbreviations) to the Maintenance Contract; and/or
 - (ii) either of the Increased Oversight Thresholds specified in paragraph b.i or b.ii of the definition thereof in Part A of Annex A (Definitions and Abbreviations) to the Maintenance Contract,has occurred, which information shall include the cumulative number of O&M Noncompliance Points accrued during each of the 12 month period and the 36 month period ending at the end of the OP Deduction Month; and
- (k) sufficient information to evidence whether any of the Closure Default Events specified in paragraph b.i, b.ii or b.iii of the definition thereof in Part A of Annex A (Definitions and Abbreviations) to the Maintenance Contract has occurred, which information shall include the cumulative amount of Operating Period Closure Deductions accrued during the one month period, the four month period and the 12 month period ending at the end of the OP Deduction Month.

Following submission of any Monthly Deductions Report pursuant to this Part 2, the O&M Contractor shall provide such other information as may reasonably be requested by the Developer in respect of the calculation of any amounts referenced in such report.

Part 3: General

1. **Intentionally Omitted**
2. **Intentionally Omitted**
3. **Intentionally Omitted**
4. **Intentionally Omitted**
5. **Intentionally Omitted**
6. **Lien Waivers**

- (a) Any lien waiver required to be executed by the O&M Contractor or a Subcontractor pursuant to Section 2.4(b)(i) of this Schedule 4 shall be:
 - (i) if, at the time of execution of such lien waiver, the O&M Contractor or a Subcontractor has not yet become entitled to receive the final payment under this Agreement or the relevant Subcontract, as applicable, substantially in the form set out in Appendix C to this Schedule 4; and
 - (ii) if, at the time of execution of such lien waiver, the O&M Contractor or a Subcontractor has received the final payment under this Agreement or the relevant Subcontract, as applicable, substantially in the form set out in Appendix D to this Schedule 4.
- (b) Any lien waiver required to be executed by a Subcontractor pursuant to Section 2.4(b)(ii) or 2.4(b)(iii) of Part 2 of this Schedule 4 shall be:
 - (i) if, at the time of execution of such lien waiver, the Subcontractor has not yet become entitled to receive the final payment under its Subcontract, substantially in the form set out in Appendix C to this Schedule 4; and
 - (ii) if, at the time of execution of such lien waiver, the Subcontractor has received the final payment under its Subcontract, substantially in the form set out in Appendix D to this Schedule 4.

Appendix A

Intentionally Omitted

Appendix B

Intentionally Omitted

Appendix C
Form of O&M Contractor and Contractor Partial Lien Waiver
[O&M CONTRACTOR][SUBCONTRACTOR] PARTIAL WAIVER OF LIENS

This partial lien waiver is issued pursuant to the requirements of the Project Agreement for the Central 70 Project dated as of November 21, 2017 (the "Project Agreement"), by and among: Colorado High Performance Transportation Enterprise ("HPTE"), a government-owned business within, and a division of, the Colorado Department of Transportation ("CDOT"); Colorado Bridge Enterprise, a government-owned business within CDOT (together with HPTE and CDOT, the "Owners") and Kiewit Meridiam Partners LLC, a limited liability company formed under the laws of the State of Delaware (the "Developer") for the design, construction, financing, operation and maintenance of a portion of the I-70 East corridor in Greater Denver (the "Project").

SUBCONTRACTOR: [name O&M Contractor or Subcontractor]
[address]

OWNERS: Colorado High Performance Transportation Enterprise
Address:
c/o Colorado Department of Transportation
4201 East Arkansas Avenue
Denver, Colorado 80222

and

Colorado Bridge Enterprise
Address:
c/o Colorado Department of Transportation
4201 East Arkansas Avenue
Denver, Colorado 80222

and

Colorado Department of Transportation
Address:
4201 East Arkansas Avenue
Denver, Colorado 80222

DATE: [month][day], [year] ("Waiver Date")

APPLICABLE SUBCONTRACT: The undersigned has entered into [agreement name (O&M Contract or applicable Subcontract)] with [name], dated as of [date], for [description of the work performed] in regards to the Project for the maximum amount of [amount]¹ (the "Agreement").²

¹ Modify to reflect actual payment terms, as needed

² If the undersigned is not a Principal Subcontractor, add a sentence linking the "Agreement" to the Developer through the various tiers of Subcontractors.

Central 70 Project: Maintenance Contract
Schedule 4 (Payments)

1. The undersigned is a subcontractor who has furnished labor, laborers, material, rental machinery, tools and/or equipment in connection with the Project as described in the Agreement (the "Work Performed").
2. The undersigned has been paid in full for all amounts that have become due and owing under the Agreement to date for Work Performed through the Waiver Date ("Relevant Amounts").
3. The undersigned waives and releases all claims and rights of any kind against the Owners, the Developer or the Project which the undersigned can or may have, in respect of the Relevant Amounts, to file any liens against the Owners or the Project for Work Performed through the Waiver Date (including, without limitation, any mechanic's or materialmen's liens, and any liens pursuant to C.R.S. §§ 38-26-101 through and including § 38-26-110).
4. The undersigned represents and warrants that all persons or entities, if any, who have, directly or indirectly, furnished labor, laborers, material, rental machinery, tools and/or equipment to the undersigned in connection with the Work Performed have been paid in full for all amounts they are owed, subject to any payment that is dependent on collection by Developer of the payments referred to in paragraph 2 above.

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Central 70 Project: Maintenance Contract
Schedule 4 (Payments)

[O&M CONTRACTOR][SUBCONTRACTOR]:

[*company name*]

By: _____

Name: _____

Title: _____

STATE OF COLORADO)

) ss.

COUNTY OF _____)

Subscribed and sworn to before me this _____ day of _____, 20____, by
_____ as _____ of _____

Notary Public

My Commission Expires: _____

Appendix D
Form of O&M Contractor and Subcontractor Final Waiver of Lien
[O&M CONTRACTOR][SUBCONTRACTOR] FINAL WAIVER OF LIENS

This lien waiver is issued pursuant to the requirements of the Project Agreement for the Central 70 Project dated as of November 21, 2017 (the "Project Agreement"), by and among: Colorado High Performance Transportation Enterprise ("HPTE"), a government-owned business within, and a division of, the Colorado Department of Transportation ("CDOT"); Colorado Bridge Enterprise, a government-owned business within CDOT (together with HPTE and CDOT, the "Owners") and Kiewit Meridiam Partners LLC, a limited liability company formed under the laws of the State of Delaware (the "Developer") for the design, construction, financing, operation and maintenance of a portion of the I-70 East corridor in Greater Denver (the "Project").

SUBCONTRACTOR: *[name of O&M Contractor or applicable Subcontractor]*
 [address]

OWNERS: Colorado High Performance Transportation Enterprise
 Address:
 c/o Colorado Department of Transportation
 4201 East Arkansas Avenue
 Denver, Colorado 80222

and

 Colorado Bridge Enterprise
 Address:
 c/o Colorado Department of Transportation
 4201 East Arkansas Avenue
 Denver, Colorado 80222

and

 Colorado Department of Transportation
 Address:
 4201 East Arkansas Avenue
 Denver, Colorado 80222

DATE: *[month][day], [year]* ("Waiver Date")

APPLICABLE SUBCONTRACT: The undersigned has entered into *[agreement name]* with *[name]*, dated as of *[date]*, for *[description of the work performed]* in regards to the Project for the maximum amount of *[amount]*³ (the "Agreement").⁴

1. The undersigned is a subcontractor who has furnished labor, laborers, material, rental machinery, tools and/or equipment in connection with the Project as described in the Agreement (the "Work Performed").
2. The undersigned has been paid in full for all amounts that have become due and owing under the Agreement to date for Work Performed through the Waiver Date ("Relevant Amounts"), subject to collection of any payment that is dependent on payment of the amount referenced in Developer's payment request to which this lien waiver is attached, and no work remains to be performed

³ Modify to reflect actual payment terms, as needed.

⁴ If the undersigned is not a Principal Subcontractor, add a sentence linking the "Agreement" to the Developer through the various tiers of Subcontractors.

Central 70 Project: Maintenance Contract
Schedule 4 (Payments)

under the Agreement that could result in the requirement for further payments to be made to the undersigned.

3. The undersigned waives and releases all claims and rights of any kind against the Owners, the Developer or the Project which the undersigned can or may have, in respect of the Relevant Amounts, to file any liens against the Owners or the Project including, without limitation, any mechanic's or materialmen's liens, and any liens pursuant to C.R.S. §§ 38-26-101 through and including § 38-26-110.
4. The undersigned represents and warrants that all persons or entities who have furnished labor or materials to the undersigned in connection with the Work Performed have been paid in full for all amounts they are owed, subject to any payment that is dependent on collection by Developer of the payments referred to in paragraph 2 above.

[remainder of page left intentionally blank; signature page follows]

Central 70 Project: Maintenance Contract
Schedule 4 (Payments)

[O&M CONTRACTOR][SUBCONTRACTOR]:

[*company name*]

By: _____

Name: _____

Title: _____

STATE OF COLORADO)

) ss.

COUNTY OF _____)

Subscribed and sworn to before me this ____ day of _____, 20____, by
_____ as _____ of _____

Notary Public

My Commission Expires: _____

Schedule 5
Intentionally Omitted

Schedule 6
Performance Mechanism
Part 1: Intentionally Omitted

Part 2: O&M Fee

1. O&M Fee Calculation

The O&M Fee for a Payment Month shall be calculated as follows:

- (a) the Base O&M Fee for such Payment Month; *less*
- (b) the sum of all Performance Payment Deductions calculated in accordance with Part 3 of Schedule 6 (Performance Mechanism) of this Agreement for the OP Deduction Month corresponding to such Payment Month; *less*
- (c) any Routine O&M Work ESB Goal deduction corresponding to such Payment Month (the ROMESBGD_m), where:

ROMESBGD_m =

- (A) in respect of each Payment Month (m) in which the first Payment Request is submitted after the amount of the five year Routine O&M Work ESB Goal deduction has been Agreed or Determined in respect of the previous five Contract Year period in accordance with Section 1.3.2.a of Schedule 15 (Federal and State Requirements), such amount; and
- (B) subject to the proviso to this Section 1(c), in respect of each other Payment Month (m), nil,

provided that, if ROMESBGD_m in any Payment Month (m) exceeds the amount of the O&M Fee otherwise payable in respect of such Payment Month, such excess shall be included by the O&M Contractor in the next O&M Payment Application submitted by it until the full amount of the deductions Agreed or Determined in accordance with Sections 1.3.2.a of Schedule 15 (Federal and State Requirements) have been deducted from payments of the O&M Fee

2. Base O&M Fee

The Base O&M Fee for each Payment Month is set out in Table 6-1 below. The Base O&M Fee shall be subject to indexation pursuant to Part 2, Section 2.3.1 of this Agreement.

Table 6-1. Base O&M Fee

Central 70 Project: Maintenance Agreement
Schedule 6 (Performance Mechanism)

█	█	█	█	█	█	█	█	█	█	█
█	█	█	█	█	█	█	█	█	█	█
█	█	█	█	█	█	█	█	█	█	█
█	█	█	█	█	█	█	█	█	█	█

Part 3: Performance Payment Deductions

1. Payment Deductions after Substantial Completion

The Monthly Performance Deduction (“MPD”) for any OP Deduction Month (m) shall be calculated in accordance with the following formula:

$$MPD_m = MND_m + MOPCD_m$$

Where:

- (a) MND_m = the Monthly Noncompliance Deduction for OP Deduction Month (m) calculated in accordance with Section 2 of this Part 3; and
- (b) $MOPCD_m$ = the Monthly Operating Period Closure Deduction for OP Deduction Month (m) calculated in accordance with Section 3 of this Part 3,

provided that the Monthly Performance Deduction for OP Deduction Month (m) shall not exceed the Maximum Performance Payment in respect of Payment Month (m) calculated in accordance with Section 1(b) of Part 2 of Schedule 6 to the Project Agreement.

2. Monthly Noncompliance Deduction after Substantial Completion

The Monthly Noncompliance Deduction (“MND”) for any OP Deduction Month (m) shall be calculated in accordance with the following formula:

$$MND_m = NCPV \times NCP_m$$

Where:

- (a) $NCPV$ = \$5,000 (indexed), being the unit value for each O&M Noncompliance Point; and
- (b) NCP_m = the number of O&M Noncompliance Points that accrued during OP Deduction Month (m) in accordance with Table 6A.2 and Part 4 of this Schedule 6.

3. Monthly Operating Period Closure Deduction

3.1 The Monthly Operating Period Closure Deduction (“MOPCD”) for any OP Deduction Month (m) shall be calculated in accordance with the following formula:

$$MOPCD_m = \sum_{p=1}^n OPCD_p$$

Where:

- (a) p = a full or partial Closure Deduction Period that commenced during OP Deduction Month (m);
- (b) n = the total number of full or partial Closure Deduction Periods that commenced during OP Deduction Month (m); and
- (c) $OPCD_p$ = the Operating Period Closure Deduction in respect of each full or partial Closure Deduction Period (p).

3.2 The Operating Period Closure Deductions Table is set out below.

Type of Closure	Number of Lanes subject to the Closure	Operating Period Closure Deduction (each such amount to be indexed) in respect of each full or partial Closure Deduction Period that commences other than on a Weekend or a Holiday
Closure of a General Purpose Lane in one direction in any O&M Segment	One Lane Closed	\$10,000
	Two Lanes Closed	\$20,000
	Three Lanes Closed	\$30,000
Closure of a Tolloed Express Lane in one direction in any O&M Segment	One Lane Closed	\$25,000
Closure of an I-70 Mainline ramp in any O&M Segment	One Lane Closed	\$7,500
	Two Lanes Closed	\$15,000
Closure of a travel lane on a CDOT Roadway or a Local Agency Roadway or a cross street in one direction, or Closure of a CDOT Roadway or Local Agency Roadway ramp, in any O&M Segment	One Lane Closed	\$5,000
	Two Lanes Closed	\$10,000
	Three Lanes Closed	\$15,000

3.3 The O&M Contractor acknowledges and accepts that, pursuant to Section 3.3 of Part 3 of Schedule 6 to the Project Agreement, at their sole discretion, the Enterprises shall be entitled, no more frequently than once every Contract Year during the Operating Period, to amend (by giving at least 30 Calendar Days' advance notice to Developer of the effective date of such amendment) the Operating Period Closure Deductions Table set forth in Section 3.2 of Part 3 of Schedule 6 to the Project Agreement. The Developer shall deliver to the O&M Contractor any such amendment received from the Enterprises, and the Developer shall be entitled to make corresponding amendments to the Operating Period Closure Deductions Table in this Schedule without need for further approval from the O&M Contractor, provided that, following any such amendment:

- (i) No Operating Period Closure Deduction shall exceed the highest Operating Period Closure Deduction set out in the Operating Period Closure Deductions Table prior to such amendment; and
- (ii) the aggregate amount of all Operating Period Closure Deductions set out in the final column of the Operating Period Closure Deductions Table shall not exceed the aggregate thereof prior to such amendment.

Part 4: Noncompliance Points

1. Table 6A.2 is a table for the identification of O&M Noncompliance Events, the Cure Period (if any) and Grace Period (if any) available to the O&M Contractor for each such O&M Noncompliance Event and the O&M Noncompliance Points applicable to such O&M Noncompliance Event.
2. Subject to Section 5 of this Part 4, for any O&M Noncompliance Event that has a Cure Period, such O&M Noncompliance Event shall accrue the number of O&M Noncompliance Points set out against such O&M Noncompliance Event in Table 6A.2 for each full or partial Noncompliance Cure Period that commences at any time from and including:
 - (a) if such O&M Noncompliance Event does not have a Grace Period, the Noncompliance Start Time; and
 - (b) if such O&M Noncompliance Event has a Grace Period, the expiry of the Grace Period, in each case, until the Noncompliance Rectification Time.
3. For any O&M Noncompliance Event that has no Cure Period, such O&M Noncompliance Event shall accrue the number of O&M Noncompliance Points set out against such O&M Noncompliance Event in Table 6A.2 but shall not accrue any further O&M Noncompliance Points during the period that the failure giving rise to the original O&M Noncompliance Event continues to subsist. Notwithstanding the foregoing, any subsequent recurrence of the same O&M Noncompliance Event shall be treated as a separate O&M Noncompliance Event and shall accrue Noncompliance Points in accordance with this Part 4.
4. Noncompliance Points in respect of an O&M Noncompliance Event:
 - (a) that has a Cure Period shall accrue in the month in which each individual Noncompliance Cure Period commences; and
 - (b) that has no Cure Period shall accrue in the month in which the Noncompliance Start Time occurs.
5. Subject to Section 1.2(b)(i) of Part 6 of this Schedule 6, if an O&M Noncompliance Event has a Grace Period and the Noncompliance Rectification Time for such O&M Noncompliance Event occurs prior to the expiry of such Grace Period, such O&M Noncompliance Event shall not accrue any O&M Noncompliance Points.
6. Intentionally Omitted.
7. Nothing in this Agreement shall prevent the accrual of O&M Noncompliance Points in respect of both the occurrence of an O&M Noncompliance Event and the O&M Noncompliance Event caused by the failure to notify the Enterprises of the same O&M Noncompliance Event in accordance with this Agreement.
8. The O&M Contractor acknowledges that each O&M Noncompliance Event hereunder is also a PA Noncompliance Event in accordance with the Project Agreement which may result in PA Noncompliance Points being assessed by the Enterprises in accordance with Schedule 6 (Performance Mechanism) to the Project Agreement. To the extent that the Enterprises assess PA Noncompliance Points against the Developer in accordance with the Project Agreement in relation to any PA Noncompliance Event that is also an O&M Noncompliance Event, the Developer shall be deemed to have assessed equivalent O&M Noncompliance Points against the O&M Contractor pursuant to this Agreement.
9. The Developer shall only be entitled (or deemed) to assess O&M Noncompliance Points against the O&M Contractor pursuant to this Agreement with respect to any O&M Noncompliance Event if the Enterprises has assessed PA Noncompliance Points against the Developer in relation to the corresponding PA Noncompliance Event, and in such case only to the same extent and in the same number as any such PA Noncompliance Points assessed by the Enterprises.

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Schedule 6 (Performance Mechanism)

10. For the avoidance of doubt, O&M Noncompliance Points incurred by the Developer as a result of Renewal Work performed by any Person other than an O&M Contractor-Related Entity will not be assessed against the O&M Contractor, except to the extent that such O&M Noncompliance Points were incurred as a result of any act or omission of or by any O&M Contractor-Related Entity.

Part 5: Operating Period Closures

1. Occurrence of Operating Period Closures

- 1.1 Each Non-Permitted Operating Period Closure shall be deemed to:
- (a) start when the relevant Closure actually starts (or is deemed to start in accordance with the proviso to the definition of Non-Permitted Operating Period Closure in Part A of Annex A (*Definitions and Abbreviations*) to the Maintenance Contract); and
 - (b) end when the relevant Closure actually ends (or is deemed to end in accordance with such proviso).
- 1.2 An Operating Period Closure Deduction shall accrue in the month in which each individual full or partial Closure Deduction Period commences.
- 1.3 A continuous Closure that affects more than one O&M Segment shall, to the extent that such Closure otherwise constitutes a Non-Permitted Operating Period Closure within the definition thereof in Part A of Annex A (*Definitions and Abbreviations*) to the Maintenance Contract, be treated as a separate Non-Permitted Operating Period Closure in each affected O&M Segment.
- 1.4 The proviso to Section 2.11.14.c of Schedule 10 (*Design and Construction Requirements*) to the Project Agreement shall apply in determining the number of separate Non-Permitted Operating Period Closures deemed to occur pursuant to Section 2.11.14.d of Schedule 10 (*Design and Construction Requirements*) to the Project Agreement.
- 1.5 Depending upon the duration of any Non-Permitted Operating Period Closure, such Non-Permitted Operating Period Closure may result in one or more Operating Period Closure Deductions, which shall accrue in respect of each full or partial Closure Deduction Period that commences during the subsistence of such Non-Permitted Operating Period Closure.
- 1.6 Subject to Section 2.5 of this Part 5, each Non-Permitted Operating Period Closure (the “First Closure”) shall result in the accrual of Operating Period Closure Deductions in addition to any Operating Period Closure Deductions that accrue in respect of any other Non-Permitted Operating Period Closure (the “Other Closure”) (including where the Other Closure is simultaneously caused by the same circumstances as caused the First Closure), but, for certainty, without double-counting where the amount of the Operating Period Closure Deductions in respect of the Other Closure is determined by reference to the Operating Period Closure Deduction specified in any of the “Two Lanes Closed” or “Three Lanes Closed” rows in the Operating Period Closure Deductions Table and one of the two or three lanes is a lane that is the subject of the First Closure.
- 1.7 For the avoidance of doubt, Operating Period Closure Deductions incurred as a result of Renewal Work performed by any Person other than an O&M Contractor-Related Entity will not be assessed against the O&M Contractor, except to the extent that such Operating Period Closure Deductions were assessed as a result of any act or omission of or by an O&M Contractor-Related Entity.

2. Operating Period Closure Deduction Modifications

- 2.1 Where a Non-Permitted Operating Period Closure is caused by the Closure of one or more contra-flow lanes, the Operating Period Closure Deduction in respect of each full or partial Closure Deduction Period that commences during the subsistence of such Non-Permitted Operating Period Closure shall be the Operating Period Closure Deduction that would otherwise have accrued multiplied by 110%.
- 2.2 Where a Non-Permitted Operating Period Closure is caused by the Closure of part of a ramp such that the ramp remains available for use by traffic but is partially restricted, the Operating Period Closure Deduction in respect of each full or partial Closure Deduction Period that commences during the subsistence of such Non-Permitted Operating Period Closure shall be the Operating Period Closure Deduction that would otherwise have accrued multiplied by 50%.

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- 2.3 Where a Non-Permitted Operating Period Closure is caused by the Closure of a shoulder only, and continued flow of traffic on the adjacent travel lane may be safely permitted, the Operating Period Closure Deduction in respect of each full or partial Closure Deduction Period that commences during the subsistence of such Non-Permitted Operating Period Closure shall be the Operating Period Closure Deduction that would have accrued had the adjacent travel lane been subject to such Closure multiplied by 50%.
- 2.4 Where a Non-Permitted Operating Period Closure is caused by the Closure of a travel lane but the adjacent shoulder is temporarily utilized as a replacement travel lane, the Operating Period Closure Deduction in respect of each full or partial Closure Deduction Period that commences during the subsistence of such Non-Permitted Operating Period Closure shall be the Operating Period Closure Deduction that would otherwise have accrued multiplied by 50%.
- 2.5 Where a Non-Permitted Operating Period Closure is caused by the Closure of a single General Purpose Lane or Tolled Express Lane in one direction of travel and the adjacent shoulder is consequently closed or inaccessible to traffic, the Closure of the shoulder shall be deemed not to constitute a Non-Permitted Operating Period Closure.
- 2.6 Where a Non-Permitted Operating Period Closure is caused by the Closure of any sidewalk, the Operating Period Closure Deduction in respect of each full or partial Closure Deduction Period that commences during the subsistence of such Non-Permitted Operating Period Closure shall be the Operating Period Closure Deduction that would have accrued had one lane of the adjacent travel lane been subject to such Closure multiplied by 10%, provided that, for certainty:
- (a) the Closure of each sidewalk on either side of the relevant travel lane shall constitute a separate Non-Permitted Operating Period Closure; and
 - (b) each Operating Period Closure Deduction that accrues in respect of the Non-Permitted Operating Period Closure of a sidewalk shall be in addition to any Operating Period Closure Deductions that accrue in respect of a Non-Permitted Operating Period Closure caused by the Closure of the adjacent travel lane.
- 2.7 Where a Non-Permitted Operating Period Closure is caused by the Closure of any driveway, the Operating Period Closure Deduction in respect of each full or partial Closure Deduction Period that commences during the subsistence of such Non-Permitted Operating Period Closure shall be the Operating Period Closure Deduction that would have accrued had one lane of the travel lane to which the driveway connects been subject to such Closure multiplied by 50%, provided that, for certainty, each Operating Period Closure Deduction that accrues in respect of the Non-Permitted Operating Period Closure of a driveway shall be in addition to any Operating Period Closure Deductions that accrue in respect of a Non-Permitted Operating Period Closure caused by the Closure of the travel lane to which such driveway connects.

Part 6: Reporting Requirements

1. Notification

1.1 Notification Initiated by O&M Contractor

- (a) The O&M Contractor shall notify the Developer (for notification of the Enterprises pursuant to Section 1.1 of Part 6 of Schedule 6 to the Project Agreement) in writing of the occurrence of any O&M Noncompliance Event or the commencement of any Non-Permitted Closure or Excused Closure as soon as reasonably practicable, and in any event within twenty-four (24) hours, after the O&M Contractor first becomes aware that the O&M Noncompliance Event has occurred or the Non-Permitted Closure or Excused Closure has commenced. Such notice shall:
- (i) in the case of an O&M Noncompliance Event:
 - (A) provide reasonable detail of the circumstances of such O&M Noncompliance Event and its Noncompliance Start Time;
 - (B) identify the number of O&M Noncompliance Points and the Grace Period (if any) and the Cure Period (if any) for such O&M Noncompliance Event, all as specified in Table 6A.2; and
 - (C) if such O&M Noncompliance Event has been cured by the time notice is given pursuant to this Section 1.1(a), identify its Noncompliance Rectification Time (if such O&M Noncompliance Event has a Cure Period) or the date and time that such O&M Noncompliance Event was fully cured (if such O&M Noncompliance Event does not have a Cure Period); or
 - (ii) in the case of a Non-Permitted Closure or Excused Closure:
 - (A) provide reasonable details of the circumstances of such Non-Permitted Closure or Excused Closure, its commencement time and (if it has ended by the time notice is given pursuant to this Section 1.1(a)), its end time;
 - (B) in the case of an Excused Closure:
 - (I) explain the basis (using the categories specified in paragraphs a to f of the definition of Excused Closure in Part A of Annex A (Definitions and Abbreviations) to the Maintenance Contract) on which the O&M Contractor considers that the relevant Closure is an Excused Closure; and
 - (II) confirm that the relevant Closure did not arise as a result of any of the circumstances specified in paragraph g of the definition of Excused Closure in Part A of Annex A (Definitions and Abbreviations) to the Maintenance Contract; and
 - (C) explain the steps being taken by the O&M Contractor to:
 - (I) mitigate the impact thereof;
 - (II) reopen the affected part(s) of the Project as quickly as possible to traffic; and
 - (III) if such Closure arose as the direct result of an Emergency, respond to the Emergency in accordance with the requirements of this Agreement.

The O&M Contractor acknowledges and agrees that within ten Calendar Days after receiving the O&M Contractor's notice pursuant to this Section 1.1(a), the Enterprises shall deliver to the Developer (and the Developer shall deliver a copy of such notice to the O&M Contractor) a written notice either confirming their agreement to, or disputing

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(with reasons), the information contained in the O&M Contractor notice. The O&M Contractor acknowledges and accepts that due to extenuating circumstances, the Enterprises may, at its discretion, provide an extension to any Grace Period applicable to an O&M Noncompliance Event so notified and will document such extension in the notice delivered by them pursuant to this Section 1.1(a), in which case the Developer shall be deemed to have extended the Grace Period applicable to such O&M Noncompliance Event hereunder.

- (b) The O&M Contractor shall notify the Developer in writing as soon as reasonably practicable, and in any event within 24 hours, after the occurrence of the Noncompliance Rectification Time in respect of any O&M Noncompliance Event which has a Cure Period, the date and time that any O&M Noncompliance Event which does not have a Cure Period has been fully cured or the end time of any Non-Permitted Closure or Excused Closure, including in such notice:
 - (i) in the case of an O&M Noncompliance Event:
 - (A) the Noncompliance Rectification Time of such O&M Noncompliance Event or, as the case may be, the date and time that such O&M Noncompliance Event was fully cured;
 - (B) a detailed description of the manner in which such O&M Noncompliance Event was cured; and
 - (C) a calculation of the total O&M Noncompliance Points that accrued in respect of such O&M Noncompliance Event; or
 - (ii) in the case of a Non-Permitted Closure or Excused Closure:
 - (A) the end time of such Non-Permitted Closure or Excused Closure; and
 - (B) in the case of a Non-Permitted Closure, a calculation of the total Operating Period Closure Deductions that accrued in respect of such Non-Permitted Closure.
- (c) The O&M Contractor acknowledges and agrees that within ten Calendar Days after receiving the O&M Contractor's notice pursuant to Section 1.1(b) of this Part 6, the Enterprises shall deliver to the Developer (and the Developer shall deliver a copy of such notice to the O&M Contractor) a written notice either confirming their agreement to, or disputing (with reasons), the information contained in the O&M Contractor's notice.
- (d) The O&M Contractor shall be entitled to satisfy its notification obligations under this Section 1.1 by ensuring that the Noncompliance and Closure Database issues email or other alerts to the Developer and the Enterprises, provided that such alerts:
 - (i) are received by the Developer and the Enterprises within the time periods required by Section 1.1(a) or (b) of this Part 6, as applicable; and
 - (ii) either:
 - (A) contain the information required by Section 1.1(a) or (b) of this Part 6, as applicable; or
 - (B) provide a direct link to such information.

1.2 Notification Initiated by the Enterprises

- (a) The O&M Contractor acknowledges and agrees that the Enterprises may deliver to the Developer a notice containing such of the information that is required to be included in the notice that the O&M Contractor should have delivered pursuant to Section 1.1(a) of this Part 6 in respect of such O&M Noncompliance Event or Non-Permitted Closure that is available to the Developer.

- (b) If the Enterprises delivers a notice pursuant to Section 1.2(a) of Part 6 of Schedule 6 to the Project Agreement relating to the O&M Work to the Developer, the Developer shall within five Calendar Days provide such notice to the O&M Contractor, in which case the O&M Contractor agrees it shall also be deemed to have received notice of the corresponding O&M Noncompliance Event, applicable Cure Period (if any) and Grace Period (if any), and assessment of O&M Noncompliance Points (if any) for purposes of this Agreement.
- (c) In the event that the Enterprises delivers a notice pursuant to Section 1.2(a) of this Part 6:
 - (i) if an O&M Noncompliance Event that has a Grace Period is the subject of such notice, such O&M Noncompliance Event shall be deemed not to have a Grace Period even if a Grace Period is specified for such O&M Noncompliance Event in Table 6A.2; and
 - (ii) the failure by the O&M Contractor to issue a notice in respect of the relevant O&M Noncompliance Event or Non-Permitted Closure shall itself constitute an O&M Noncompliance Event in accordance with item 2.16 in Table 6A.2.

2. **Noncompliance and Closure Database**

2.1 Without prejudice to the O&M Contractor obligations under Section 1 of this Part 6, the O&M Contractor shall, starting at Substantial Completion, maintain an electronic database that records on a real-time basis, and retains, information in relation to each and every PA Noncompliance Event, Non-Permitted Closure and Excused Closure that occurs or commences, as the case may be. The format and design of the Noncompliance and Closure Database shall (i) include the minimum requirements set forth below, and (ii) otherwise be sufficient to permit the Developer to satisfy its obligations pursuant to Section 2 of Part 6 of Schedule 6 to the Project Agreement. At a minimum, the following data shall be recorded in such Noncompliance and Closure Database:

- (a) in respect of each Noncompliance Event (whether notified by the O&M Contractor to the Developer pursuant to Section 1.1(a) of this Part 6 or by the Developer to the O&M Contractor pursuant to Section 1.2(a) of this Part 6):
 - (i) a description of such PA Noncompliance Event in reasonable detail, including the circumstances giving rise to such PA Noncompliance Event, its Noncompliance Start Time, any applicable Cure Period or Grace Period and the number of PA Noncompliance Points set out for such PA Noncompliance Event in Table 6A.2;
 - (ii) the location of such PA Noncompliance Event within the Project (if applicable);
 - (iii) for any PA Noncompliance Event that is not yet cured:
 - (A) the calculation of the PA Noncompliance Points that have accrued in respect of such PA Noncompliance Event up to that time; and
 - (B) the steps being taken to cure it; and
 - (iv) for any PA Noncompliance Event that the O&M Contractor considers to be cured:
 - (A) the Noncompliance Rectification Time of such PA Noncompliance Event (if such PA Noncompliance Event has a Cure Period) or the date and time that such PA Noncompliance Event was fully cured (if such Noncompliance Event does not have a Cure Period) and, in either case, the calculation of the total PA Noncompliance Points that accrued in respect of such PA Noncompliance Event; and
 - (B) the nature of the cure in reasonable detail and the measures that have been, and will be, taken to prevent the reoccurrence of such PA Noncompliance Event; and

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- (b) in respect of each Non-Permitted Closure (whether notified by the O&M Contractor to the Developer pursuant to Section 1.1.(a) of this Part 6 or by the Enterprises to the O&M Contractor pursuant to Section 1.2.(a) of this Part 6) and each Excused Closure:
 - (i) a description of such Non-Permitted Closure or Excused Closure in reasonable detail, including the location thereof within the Project, the circumstances giving rise to such Non-Permitted Closure or Excused Closure and its commencement time;
 - (ii) for any Non-Permitted Closure or Excused Closure that is continuing:
 - (A) in the case of a Non-Permitted Closure, the calculation of the Operating Period Closure Deductions that have accrued in respect of such Non-Permitted Closure up to that time; and
 - (B) a description of the steps being taken by the O&M Contractor to:
 - (I) mitigate the impact thereof;
 - (II) reopen the affected part(s) of the Project as quickly as possible to traffic; and
 - (III) if such Closure arose as the direct result of an Emergency, respond to the Emergency in accordance with the requirements of this Agreement; and
 - (iii) for any Non-Permitted Closure or Excused Closure that has ended:
 - (A) the end time of such Non-Permitted Closure or Excused Closure;
 - (B) in the case of a Non-Permitted Closure, the calculation of the total Operating Period Closure Deductions that accrued in respect of such Non-Permitted Closure; and
 - (C) all of the steps taken by the O&M Contractor as referred to in Section 2.1(b)(ii)(B) of this Part 6 during the subsistence of such Non-Permitted Closure or Excused Closure and the measures that have been, and will be, taken to prevent the reoccurrence of similar Non-Permitted Closures or Excused Closures.

2.2 The database shall also record on a real-time basis:

- (a) the cumulative number of PA Noncompliance Points that have accrued and cumulative number of relevant PA Noncompliance Events that have occurred in such a manner as to allow the Parties to establish at any time whether any Noncompliance Default Event or any Increased Oversight Threshold has occurred; and
- (b) the cumulative amount of Operating Period Closure Deductions that have accrued in such a manner as to allow the Parties to establish at any time whether any Closure Default Event has occurred.

2.3 The O&M Contractor shall provide to the Developer and, pursuant to Section 2.3 of Part 6 of Schedule 6 to the Project Agreement, the Enterprises unrestricted electronic access to the Noncompliance and Closure Database at all times and the database shall be designed to enable the Developer and the Enterprises to:

- (a) inspect all entries by the O&M Contractor;
- (b) flag a request for further information from the O&M Contractor related to any entry;
- (c) flag any entry where the Developer or the Enterprises dispute the entry;
- (d) enter information in respect of each Noncompliance Event and Non-Permitted Closure notified to the O&M Contractor by the Developer pursuant to Section 1.2(a) of this Part 6 to the same level of detail as the O&M Contractor is required to enter in respect of

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Noncompliance Events and Non-Permitted Closures notified by it to the Developer pursuant to Section 1.1(a) of this Part 6;

- (e) record for each PA Noncompliance Event or Non-Permitted Closure the issuance of a notice by the Developer pursuant to Section 1.2(a) of Part 6 of Schedule 6 to the Project Agreement;
- (f) automatically generate a report recording the number and details of:
 - (i) PA Noncompliance Events that have been cured and remain uncured; and
 - (ii) Non-Permitted Closures and Excused Closures that have ended and are continuing,in either case, including:
 - (iii) separate counts of:
 - (A) PA Noncompliance Events, Non-Permitted Closures and Excused Closures notified by Developer pursuant to Section 1.1(a) of Part 6 of Schedule 6 to the Project Agreement; and
 - (B) Noncompliance Events and Non-Permitted Closures notified by the Developer pursuant to Section 1.2(a) of Part 6 of Schedule 6 to the Project Agreement; and
 - (iv) the number of Noncompliance Points and Operating Period Closure Deductions:
 - (A) accrued by the O&M Contractor; and
 - (B) subject to dispute by either Party,in any such case, within any user-defined time period; and
- (g) flag the Enterprises' concurrence or otherwise that the Noncompliance Rectification Time has occurred in respect of a Noncompliance Event or a Non-Permitted Closure has ended.

APPENDIX A
Noncompliance Points Tables

Any single failure that constitutes a Noncompliance Event pursuant to more than one item in Table 6A-2 shall be deemed only to constitute a Noncompliance Event pursuant to the item that is more specific to such failure. In the event of any ambiguity as to which Noncompliance Event is more specific to a failure, Section 2.4.3 of the Project Agreement shall apply.

For certainty, if an act, omission, event or other circumstance gives rise to more than one failure each of which constitutes a Noncompliance Event, all provisions of this Agreement that apply as a result of the occurrence of each such Noncompliance Event shall apply without limitation or prejudice to the provisions of this Agreement that apply as a result of the occurrence of any other such Noncompliance Event.

Table 6A.1 – Intentionally Omitted.

Table 6A.2 – Operating Period O&M Noncompliance Events

Ref	Activity Type	Heading	Noncompliance Event – Failure to:	Cure Period (days)	Grace Period (days)	Number of Points
2.1	O&M Contractor's Management Process	Updates to the Project Management Plan (PMP)	Carry out and submit to the Developer updates to the Project Management Plan at times and in the manner prescribed in the Project Management Plan and in accordance with <u>Section 2.2.1</u> of <u>Schedule 8</u> (<i>Project Administration</i>).	7	N/A	1
2.2	O&M Contractor's Management Process	Compliance with PMP	Maintain, or comply with any provision of the Project Management Plan (PMP) as described in <u>Section 2</u> of <u>Schedule 8</u> (<i>Project Administration</i>).	7	7	2
2.3	O&M Contractor's Management Process	Compliance with Safety Plan	Adhere to or enforce a safety policy, procedure, process, or guideline as required by the Safety Plan as described in <u>Section 7</u> of <u>Schedule 8</u> (<i>Project Administration</i>).	2	N/A	4
2.4	O&M Contractor's Management Process	Environmental Compliance Work Plan (ECWP)	Implement, maintain and comply with any provision of the ECWP as described in <u>Section 2</u> of <u>Schedule 17</u> (<i>Environmental Requirements</i>).	7	7	2
2.5	O&M Contractor's Management Process	Comply with Document Control System	Comply with the requirements of the Document Control System (DCS) in accordance with <u>Section 13</u> of <u>Schedule 8</u> (<i>Project Administration</i>).	2	N/A	2
2.6	O&M Contractor's Management Process	Maintenance Management System (MMIS)	Maintain, update and comply with any requirement related to the Maintenance Management Information System (MMIS) as set out in <u>Section 7</u> of <u>Schedule 11</u> (<i>Operations and Maintenance</i>).	7	7	2

Table 6A.2 – Operating Period O&M Noncompliance Events

Ref	Activity Type	Heading	Noncompliance Event – Failure to:	Cure Period (days)	Grace Period (days)	Number of Points
2.7	O&M Contractor's Management Process	Administrative process for Meetings	Conduct, attend or follow specified process in connection with any meeting during the Operating Period as described in <u>Schedule 11 (Operations and Maintenance)</u> including providing notification to the Developer of the meeting details.	N/A	N/A	1
2.8	O&M Contractor's Management Process	Updates to the Performance Requirements	Provide timely, accurate and complete updates to the Performance Requirements in accordance with Section 4.2.7 of <u>Schedule 11 (Operations and Maintenance)</u> .	14	7	1
2.9	O&M Contractor's Management Process	Employment of Key Personnel	Cause the continuous employment in connection with the O&M Work After Construction of any of the Key Personnel required to be employed during the Operating Period complying with the qualifications requirements or the time periods specified in <u>Schedule 27 (Key Personnel)</u> .	14	21	1
2.10	O&M Contractor's Management Process	Licensing of Key Personnel	Submit documentation demonstrating compliance with qualification requirements with regard to Key Personnel in accordance with <u>Schedule 27 (Key Personnel)</u> .	7	7	1
2.11	Reserved					

Table 6A.2 – Operating Period O&M Noncompliance Events

Ref	Activity Type	Heading	Noncompliance Event – Failure to:	Cure Period (days)	Grace Period (days)	Number of Points
2.12	Deliverables	General Deliverables	Prepare, implement, maintain, update or submit any plan, report, deliverable or other Deliverable during the Operating Period in accordance with this Agreement.	14	7	1
2.13	Deliverables	General Deliverables	Address or resolve the Developer's and the Department's comments with respect to any Deliverable (excluding any Deliverable specified in <u>Section 9(a) and 9(b)</u> of <u>Schedule 9 (Submittals)</u>) prior to the next submittal of the Deliverable in accordance with <u>Schedule 9 (Submittals)</u> .	14	7	1
2.14	Deliverables	Maintenance Reporting	Provide a complete, accurate and timely Monthly O&M Report as required by <u>Section 13.1</u> of <u>Schedule 11 (Operations and Maintenance)</u> .	7	N/A	1
2.15	Deliverables	Maintenance Reporting	Provide a complete, accurate and timely Annual O&M Report as required by <u>Section 13.2</u> of <u>Schedule 11 (Operations and Maintenance)</u> .	14	7	1

Table 6A.2 – Operating Period O&M Noncompliance Events

Ref	Activity Type	Heading	Noncompliance Event – Failure to:	Cure Period (days)	Grace Period (days)	Number of Points
2.16	Deliverables	Noncompliance and Closure Reporting	Provide accurate, complete and timely reporting of (i) any Noncompliance Events and the Noncompliance Points accrued in respect of such Noncompliance Event, or (ii) any Non-Permitted Closure and the Operating Period Closure Deductions accrued in respect of such Non-Permitted Closure, in any such case as required by <u>Section 1 of Part 6</u> of this <u>Schedule 6</u> .	14	N/A	2
2.17	Reserved					
2.18	Reserved					
2.19	Project Delivery and Deliverables	Federal and State Requirements	Comply in a timely, accurate and complete manner with any of the O&M Contractor's obligations (including any of the reporting requirements) contained in <u>Schedule 15 (Federal and State Requirements)</u> but, for certainty, excluding any failure described in <u>Section 1.3.2 of Schedule 15 (Federal and State Requirements)</u> .	14	7	2
2.20	Deliverables	Governmental Approvals and Permits	Deliver to the Developer (for delivery to the Department): (a) any documentation required to be submitted pursuant to <u>Section 8.4.3 of the Maintenance Contract</u> ; or (b) copies of new or amended	7	7	1

Table 6A.2 – Operating Period O&M Noncompliance Events

Ref	Activity Type	Heading	Noncompliance Event – Failure to:	Cure Period (days)	Grace Period (days)	Number of Points
			Governmental Approvals or Permits obtained in accordance with <u>Section 8.4</u> of the Maintenance Contract.			
2.21	Deliverables	Submit insurance records	Submit documents verifying insurance coverage and payment of insurance premiums and renewals in accordance with <u>Section 25</u> of the Maintenance Contract.	10	N/A	2
2.22	Deliverables	Monthly Report	Submit a Monthly Deductions Report pursuant to <u>Section 3.1</u> of Part 2 of <u>Schedule 4 (Payments)</u> .	N/A	N/A	1
2.23	Reserved					
2.24	Reserved					
2.25	Department Oversight	Inspection and Audit by the Department or Governmental Entities	Comply with any requirements to provide advance notice, access to Project Records, or otherwise ensure Reasonable Efforts to support the Developer, the Department or any Governmental Authority with regard to their rights to audit, review, inspect, or conduct tests in accordance with <u>Section 21</u> of the Maintenance Contract.	5	N/A	1

Table 6A.2 – Operating Period O&M Noncompliance Events

Ref	Activity Type	Heading	Noncompliance Event – Failure to:	Cure Period (days)	Grace Period (days)	Number of Points
2.26	Department Oversight	Provision of access to Project Records	Keep, maintain, permit access or make available to the Developer and the Department at the specified location, within specified time of request and for the specified retention period, any Project Record as required by <u>Section 19</u> of the Maintenance Contract.	5	N/A	1
2.27	Department Oversight	Department Safe Access to Site and other off-Site locations	Provide safe physical access for representatives of the Developer, the Enterprises or the Department to the Site or where materials are to be inspected, at an off-Site location and to the O&M Contractor’s project field offices in connection with the O&M Work After Construction and all inspections as required by <u>Schedule 11 (Operations and Maintenance Requirements)</u> and <u>Schedule 12 (Handback Requirements)</u> .	2	N/A	4
2.28	Department Oversight	Increased Oversight	Comply with any Approved remedial plan required in accordance with the need for increased oversight by the Department as detailed in <u>Section 21.3</u> of the Maintenance Contract.	7	N/A	4

Table 6A.2 – Operating Period O&M Noncompliance Events

Ref	Activity Type	Heading	Noncompliance Event – Failure to:	Cure Period (days)	Grace Period (days)	Number of Points
2.29	Project Delivery	CDPS-SCP and MS4 requirements	Comply with CDPS-SCP and MS4 requirements, and the Environmental Requirements referenced in <u>Appendix A to Schedule 17</u> , Revision of Section 208.09 (including, but not limited to: failure to comply with BMP, incomplete SWMP, or failure to correctly implement the SWMP).	1	2	4
2.30	Project Delivery	Courtesy Patrol Services	Comply with any provision of <u>Section 10</u> of, and <u>Appendix B to, Schedule 11 (Operations and Maintenance Requirements)</u> , excluding the General Requirements in relation to the Courtesy Patrol Services in <u>Appendix A-2 to Schedule 11, (Operations and Maintenance Requirements)</u> .	7	N/A	1
2.31	Project Delivery	Punch List	Prepare, maintain or timely deliver in accordance with <u>Part 7 of Schedule 3 (Commencement and Completion Mechanics)</u> a Punch List (or a modification thereto) containing all items of O&M Work After Construction to be completed, corrected, adjusted or modified.	7	N/A	4
2.32	Reserved					

Table 6A.2 – Operating Period O&M Noncompliance Events

Ref	Activity Type	Heading	Noncompliance Event – Failure to:	Cure Period (days)	Grace Period (days)	Number of Points
2.33	Notification by Developer	CDPS-SCP and MS4 requirements	Notify to the Developer, the Department and the applicable Governmental Authority Developer's failure to comply with CDPS-SCP and MS4 requirements (including, but not limited to: failure to comply with BMP, incomplete SWMP, or failure to correctly implement the SWMP).	N/A	1	2
2.34	Notification by Developer	Recognized Hazardous Materials	Comply with the O&M Contractor's reporting or notification obligations under <u>Schedule 17 (Environmental Requirements)</u> in respect of Recognized Hazardous Materials.	N/A	1	3
2.35	Notification by Developer	Notification of Environmental Breach	Notify the Developer of any breach by the O&M Contractor of any Environmental Laws, Governmental Approvals, or any of its Environmental Requirements.	N/A	1	1
2.36	Inspections, Defects and Standards	Timely and accurate Inspections	Perform timely and accurate inspections in accordance with <u>Schedule 11 (Operations and Maintenance Requirements)</u> in respect of O&M Work After Construction that is the subject of the inspections identified in such <u>Schedule 11 (Operations and Maintenance Requirements)</u> .	7	N/A	1
2.37	O&M Defects	Timely Remedy of Category 1 Defect	Remedy a Category 1 Defect (Immediate Action) within the Defect Remedy Period.	Defect Remedy Period	N/A	4
2.38	Reserved					

Table 6A.2 – Operating Period O&M Noncompliance Events

Ref	Activity Type	Heading	Noncompliance Event – Failure to:	Cure Period (days)	Grace Period (days)	Number of Points
2.39	O&M Defects	Timely Remedy of Category 2 Defect	Remedy a Category 2 Defect (Permanent Repair) (for certainty, other than in an Excluded Element) within the Defect Remedy Period.	1	N/A	1
2.40	O&M Defects	Prevent occurrence of Defect	Prevent a Category 2 Defect (for certainty, other than in an Excluded Element) from deteriorating into a Category 1 Defect.	N/A	N/A	1
2.41	Project Delivery	Maintenance of Traffic Requirements	Perform O&M Work After Construction in compliance with any of O&M Contractor’s obligations or commitments (other than those in respect of lane Closures or Closures which are subject to Operating Period Closure Deductions in accordance with this <u>Schedule 6</u>) in respect of maintenance of traffic as set out in <u>Section 2 of Schedule 10 (Design and Construction Requirements)</u> , O&M Contractor’s Maintenance Management Plan and O&M Contractor’s Transportation Management Plan (TMP), including Temporary Traffic Control Plan (TCP) Strategies, Transportation Operations (TOP) Strategies and Public Information (PI) Strategies.	1	N/A	4
2.42	Reserved					
2.43	Reserved					

Table 6A.2 – Operating Period O&M Noncompliance Events

Ref	Activity Type	Heading	Noncompliance Event – Failure to:	Cure Period (days)	Grace Period (days)	Number of Points
2.44	Reserved					
2.45	Notification by O&M Contractor	ITS Outage	Provide notification within the time period specified in Section 3 of Schedule 10 (<i>Design and Construction Requirements</i>) for any planned ITS outage	N/A	N/A	1
2.46	Reserved					
2.47	Reserved					
2.48	Project Delivery	Maintain Utility Service	Maintain a Utility fully operational except as specifically permitted by the Utility Owner and by any affected property in accordance with Section 4.2.9 of Schedule 10 (<i>Design and Construction Requirements</i>).	2	N/A	4
2.49	Project Delivery	Environmental Requirements	Comply with the requirements of Environmental Laws or any of the Environmental Requirements as they relate to, exceedance of permitted thresholds, as required by applicable Law and all relevant Governmental Approvals.	2	2	2
2.50	Nonconforming Work	Deliverables	Submit an updated NCR in accordance with Section 6.5.2 of Schedule 8 (<i>Project Administration</i>) within five Working Days after submission of an initial NCR in accordance with Section 6.5.1 of Schedule 8 (<i>Project Administration</i>).	5	N/A	2

Table 6A.2 – Operating Period O&M Noncompliance Events

Ref	Activity Type	Heading	Noncompliance Event – Failure to:	Cure Period (days)	Grace Period (days)	Number of Points
2.51	Nonconforming Work	Deliverables	Submit a NCR in accordance with <u>Section 6.5.7 of Schedule 8 (Project Administration)</u> within five Working Days of issuance of a NCN by the Department in accordance with <u>Section 6.5.6 of Schedule 8 (Project Administration)</u> .	5	N/A	2
2.52	Project Delivery	Deliverable Compliance	Comply with any requirement applicable to, or obligation of Developer associated with, a Deliverable set out in <u>Section 14 of Schedule 11 (Operations and Maintenance Requirements)</u> .	7	7	2
2.53	Developer's Management Process	Compliance with MMP	Maintain, update and comply with any provision of the Maintenance Management Plan as described in <u>Section 5 of Schedule 11 (Operations and Maintenance Requirements)</u> .	7	7	2
2.54	Developer's Management Process	Compliance with OMP	Maintain, update and comply with any provision of the Operations Management Plan as described in <u>Section 9 of Schedule 11 (Operations and Maintenance Requirements)</u> .	7	7	2
2.55	Developer's Management Process	Compliance with Renewal Works Requirements	Establish, maintain, update and comply with any requirement related to Renewal Work as set out in <u>Section 6 of Schedule 11 (Operations and Maintenance Requirements)</u> .	7	7	2
2.56	Project Delivery	Deliverable Compliance	Comply with any requirement applicable to, or obligation of O&M Contractor associated with, a	7	7	2

Table 6A.2 – Operating Period O&M Noncompliance Events

Ref	Activity Type	Heading	Noncompliance Event – Failure to:	Cure Period (days)	Grace Period (days)	Number of Points
			Deliverable set out in <u>Table 2 of Schedule 8 (Project Administration)</u> and effective during the Operating Period.			
2.57	Project Delivery	ETC System outage	Prevent interference with, or damage to, the ETC System by any O&M Contractor-Related Entity resulting in an unplanned ETC System outage which is only able to be rectified with the involvement of the ETC System Integrator, but which does not result in a Closure of a Tolled Express Lane.	7	N/A	10
2.58	O&M Contractor's Management Process	Compliance with QMP	Maintain, update and comply with any provision of the Quality Management Plan during the Operating Period as described in <u>Section 6 of Schedule 8 (Project Administration)</u> .	7	7	2
2.59	Deliverables	Record keeping for Utilities	Make records relating to Utilities available as required by <u>Section 4 of Schedule 10 (Design and Construction Requirements)</u> .	7	N/A	2
2.60	Deliverables	Materials testing records	Submit to the Developer records of materials testing and information for submission to the Department's Quality Records Database in accordance with the requirements of <u>Section 6.4.3 of Schedule 8 (Project Administration)</u> within the specified time periods and conforming to the requirements of <u>Section 6 of Schedule 8 (Project Administration)</u> and the O&M	2	2	3

Table 6A.2 – Operating Period O&M Noncompliance Events

Ref	Activity Type	Heading	Noncompliance Event – Failure to:	Cure Period (days)	Grace Period (days)	Number of Points
			Contractor's IQC Program.			
2.61	Deliverables	Certification	Submit required valid certificates in relation to the O&M Work After Construction in accordance with <u>Section 6.4.3 of Schedule 8 (Project Administration)</u> .	2	N/A	1
2.62	Reserved					
2.63	Project Delivery	Subcontracting Requirements	Meet the requirements of <u>Section 17.5 of the Maintenance Contract</u>	7	3	1
2.64	Project Delivery	ETC System outage	Prevent interference with, or damage to, the ETC System by any O&M Contractor-Related Entity resulting in an unplanned ETC System outage which is able to be rectified without the involvement of the ETC System Integrator, but which does not result in a Closure of a Tolled Express Lane.	1	N/A	4
2.65	O&M Contractor Management Process	Updates to the Environmental Compliance Work Plan (ECWP) and Environmental Status Report (ESR)	Carry out and submit to the Department updates to the ECWP and ESR at times and in the manner prescribed in the Project Management Plan and in accordance with <u>Section 2.1.2 of Schedule 17 (Environmental Requirements)</u> , and <u>Section 2.2.1 of Schedule 8 (Project Administration)</u> .	7	7	1
2.66	Nonconforming Work	Deliverables	Submit a NCR in accordance with <u>Section 6.5.1 of Schedule 8 (Project Administration)</u> within 24 hours after the O&M Contractor first becomes	1	N/A	2

Table 6A.2 – Operating Period O&M Noncompliance Events

Ref	Activity Type	Heading	Noncompliance Event – Failure to:	Cure Period (days)	Grace Period (days)	Number of Points
			aware of the Nonconforming Work.			
2.67	Nonconforming Work	Nonconforming Work Remedy	Complete a Nonconforming Work Remedy within the Approved timeframe.	7	N/A	2
2.68	Nonconforming Work	Corrective Action	Complete any Corrective Action within the timeframe identified in the Approved Corrective Action Plan.	7	N/A	1
2.69	Reserved					
2.70	Reserved					
2.71	Reserved					
2.72	Reserved					
2.73	Reserved					
2.74	Reserved					
2.75	Reserved					
2.76	Intentionally Omitted					
2.77	Notification by O&M Contractor	Air Quality	Comply with the O&M Contractor’s reporting or notification obligations under <u>Schedule 17</u> (<i>Environmental Requirements</i>) in respect of Air Quality.	N/A	1	3

Schedule 7
Compensation on Termination

1. Compensation on Termination For Termination of the Project Agreement

- 1.1 If the Maintenance Contract is terminated pursuant to Part 2, Section 33.1.2.a as a result of a termination of the Project Agreement pursuant to Schedule 1 to the Project Agreement, then:
- (a) if, pursuant to the Project Agreement, the Developer is entitled to receive the Financial Close Termination Amount, the Developer shall, subject to the Pay-if-Paid Provisions, pay a Termination Amount to the O&M Contractor in an amount equal to \$65,000; and
 - (b) if, pursuant to the Project Agreement, the Developer is not entitled to receive the Financial Close Termination Amount, then neither Party shall be entitled to receive a Termination Amount.
- 1.2 If the Maintenance Contract is terminated pursuant to Part 2, Section 33.1.2.a as a result of the termination of the Project Agreement pursuant to (a) Section 33.1.2 of the Project Agreement, (b) 33.1.4 of the Project Agreement, (c) Section 33.1.5 of the Project Agreement (other than as a result of an O&M Contractor Default), (d) Section 33.1.6 of the Project Agreement, or (e) Section 33.1.7 of the Project Agreement, then the Developer shall, subject to the Pay-if-Paid Provisions, pay a Termination Amount to the O&M Contractor in an amount calculated (without double-counting) as follows:
- (i) that portion of the O&M Fee that is due and payable to the O&M Contractor by the Developer and applicable to O&M Activities completed up to the O&M Termination Date and which has not previously been paid to the O&M Contractor in accordance with the Maintenance Contract, and any other sums due to the O&M Contractor under the terms of the Maintenance Contract but unpaid as at the O&M Termination Date; *plus*
 - (ii) Subcontractor Breakage Costs; *less*
 - (iii) Termination Insurance Proceeds; *less*
 - (iv) Termination Deduction Amounts.
- 1.3 If the Maintenance Contract is terminated pursuant to Part 2, Section 33.1.2.a of the Maintenance Contract as a result of a termination of the Project Agreement pursuant to (a) Section 33.1.3 of the Project Agreement or (b) pursuant to Section 33.1.5 of the Project Agreement, in each case for any reason that is attributable to a failure of the O&M Contractor to perform its obligations under the Maintenance Contract, then the O&M Contractor shall, subject to the Termination Liability Cap, be responsible to the Developer for any and all costs, Losses, liabilities, expenses, fees, penalties, fines, damages or injury of the Developer as a result of such termination, including, without limitation, amounts payable by the Developer or deductible under the Project Agreement, and amounts payable to other contractors, amounts required to discharge all outstanding liabilities of the Developer to the Lenders under the Financing Documents (including but not limited to the Project Debt) to the extent the Developer is not entitled to be compensated for the same by the Enterprises under the Project Agreement, the amount of all equity invested in Developer by its direct and indirect owners and any projected returns on equity, as set forth in the Financial Model, and, to the extent such termination occurs prior to the Substantial Completion Date, an amount equal to that portion of the O&M Mobilization Fee paid to the O&M Contractor prior to the date of such termination.
- 1.4 If the Maintenance Contract is terminated pursuant to Part 2, Section 33.1.2.a as a result of a termination of the Project Agreement pursuant to Section 33.1.3 of the Project Agreement other

than for any reason that is attributable to a failure of the O&M Contractor to perform its obligations under the Maintenance Contract, then the Developer shall, subject to the Pay-if-Paid Provisions, pay a Termination Amount to the O&M Contractor in an amount calculated (without double-counting) as follows:

- (i) that portion of the O&M Fee that is due and payable to the O&M Contractor by the Developer and applicable to the O&M Activities completed up to the O&M Termination Date and which has not previously been paid to the O&M Contractor in accordance with the Maintenance Contract; *plus*
- (ii) Subcontractor Breakage Costs.

2. Compensation on Termination for O&M Contractor Default

If the Maintenance Contract is terminated pursuant to Part 2, Section 33.1.3.a, the O&M Contractor shall, subject to the Termination Liability Cap, be responsible to the Developer for any and all costs, Losses, liabilities, expenses, fees, penalties, fines, damage or injury of Developer as a result of such termination, including, without limitation for all costs and expenses incurred by the Developer in tendering for, preparing, negotiating and entering into one or more contracts (each a "Replacement Contract") with one or more replacement contractors to complete all or part of the O&M Activities upon the same or substantially similar terms as the Maintenance Contract, any amount by which the aggregate sum payable by the Developer under any Replacement Contract(s) exceeds the amounts which would have been payable to the O&M Contractor under the O&M Contract, any amounts payable by the Developer or deductible under the Project Agreement, any amounts payable to the Lenders under the Financing Documents (excluding debt principal and interest), such as increased oversight costs, and, to the extent such termination occurs prior to the Substantial Completion Date, an amount equal to that portion of the O&M Mobilization Fee paid to the O&M Contractor prior to the date of such termination.

3. Compensation on Termination for Developer Default

If the Maintenance Contract is terminated pursuant to Part 2, Section 33.1.4.a, the Developer shall pay a Termination Amount to the O&M Contractor in an amount calculated (without double-counting) as follows:

- (i) that portion of the O&M Fee that is due and payable to the O&M Contractor by the Developer and applicable to the O&M Activities completed up to the O&M Termination Date and which has not previously been paid to the O&M Contractor in accordance with the Maintenance Contract; *plus*
- (ii) Subcontractor Breakage Costs.

4. Miscellaneous Compensation Provisions

4.1 Transfer of Key Assets

The O&M Contractor shall comply with its obligations under Part 2, Section 34 of the Maintenance Contract as a condition precedent to the Developer's payment of any Termination Amount.

**Schedule 8
Project Administration**

1. GENERAL REQUIREMENTS

The O&M Contractor shall be solely responsible for the management and administration of the O&M Activities, coordinating all activities necessary to perform the O&M Activities, and reporting and documenting all O&M Activities and ensuring the quality of the O&M Activities in conformance with the O&M Contract. The O&M Contractor shall satisfy all functional needs and characteristics of Project administration and this Schedule 8.

2. MAINTENANCE MANAGEMENT PLAN (MMP) AND OPERATIONS MANAGEMENT PLAN (OMP)

2.1. General Requirements

2.1.1. The O&M Contractor shall submit a Maintenance Management Plan (MMP) and Operations Management Plan (OMP) that encompasses the O&M Term, for inclusion in Developer's PMP (as defined in the Project Agreement). Such plans shall provide clear detail of the O&M Contractor's overall approach to its team organization, structure, and management processes, and shall describe the scope, goals, and objectives of Project approach and intended results and be fully compliant with all provisions of the O&M Contract. Such plans shall identify by signature page and date, the title of the qualified professionals who are responsible for planning, reviewing, approving, reporting, monitoring, controlling, implementing, revising, and issuing the plans, including revisions. At a minimum, such plans shall include the following (where applicable relating to both the O&M Contractor and its Subcontractors but also, where applicable, clearly identifying the division of roles and responsibilities between the O&M Contractor and its Subcontractors):

- a. An organizational chart and description, indicating the O&M Contractor's overall team structure including all Key Personnel, management staff and their reporting relationships for all O&M Activities;
- b. Intentionally Omitted;
- c. Intentionally Omitted;
- d. Intentionally Omitted;
- e. An Operations and Maintenance (O&M) organizational chart, and description, indicating the roles, responsibilities and structure of the O&M staff during the O&M Term, down to and including the roadway, drainage, bridge, tolling systems and Intelligent Transportation Systems (ITS) discipline leads for any O&M Activities;
- f. Intentionally Omitted;
- g. Intentionally Omitted;
- h. Description of key processes and their reference location within the O&M Contractor's Operations Management Plan and Maintenance Management Plan, in accordance with the Schedule 11 requirements, including Quality Management Plan requirements, process for inspections and notifications of issues of non-compliance to the Developer, and processes and timeframe for providing applicable cures for nonconformance;
- i. Intentionally Omitted;
- j. Process for addressing durability, maintainability and environmental compliance in the O&M Activities;
- k. Intentionally Omitted;
- l. Intentionally Omitted;

- m. Process for construction closeout including the O&M Contractor's approach to satisfaction of Substantial Completion Conditions and Final Acceptance Conditions;
- n. Description of key processes, and their reference location within the O&M Contractor's Safety Management Plan, in accordance with Schedule 8 requirements, for both employees of the O&M Contractor and its Subcontractors and the public, including training procedures, description of the subcontractor Health and Safety Plan, accident investigation procedures and exposure assessment;
- o. Description of key processes, and their reference location within the O&M Contractor's Transportation Management Plan, in accordance with Section 2 of Schedule 10 Maintenance of Traffic requirements, including interface with the Developer, the Department and the City of Denver (CCD);
- p. Description of key processes, and their reference location, including interface with the Developer, the Department, CCD, Governmental Authorities, regulatory agencies, Utility Owners, Railroads, other stakeholders and the public during the O&M Activities;
- q. Intentionally Omitted;
- r. Intentionally Omitted;
- s. Description of key processes for managing the O&M Contractor's Emerging Small Business (ESB), program, and their reference location within their respective Plans, in accordance with the Schedule 15 requirements;
- t. Description of the O&M Contractor's key processes and approach to Supervening Event and Change management procedures; and
- u. The O&M Contractor's approach to non-compliance reporting, evaluation, and resolution with each of its Subcontractors and methodology on how this information will be reported to the Developer, including in accordance with the Schedule 6, Part 6 requirements.

2.2. Project Management Plan Updates

- 2.2.1. The O&M Contractor shall monitor and improve the effectiveness of its MMP and QMP and resubmit the MMP and OMP for inclusion in the PMP (as defined in the Project Agreement) to be submitted by the Developer to the Department pursuant to Section 2.2.1 of Schedule 8 to the Project Agreement. The O&M Contractor acknowledges and accepts that it may be required to resubmit its MMP and OMP on an annual basis, or more frequently, as the Department may require pursuant to Section 2.2.1 of Schedule 8 to the Project Agreement and as notified by the Developer.
- 2.2.2. The O&M Contractor shall clearly identify in a cover sheet what changes were made in any MMP or OMP update to expedite the Developer's review. Also, a redline copy and a final clean copy shall be submitted to the Developer.

3. INTENTIONALLY OMITTED

4. INTENTIONALLY OMITTED

5. GOVERNMENTAL APPROVALS TRACKING

5.1. Governmental Approvals tracking list

- 5.1.1. The O&M Contractor acknowledge the Developer's obligations pursuant to Section 5.1.1 of Schedule 8 to the Project Agreement. The O&M Contractor shall submit to the Developer in sufficient time for inclusion by the Developer in the list to be provided by the Developer to the Department pursuant to Section 5.1.1 of Schedule 8 to the Project Agreement a list (the "Governmental Approvals List") of all Governmental Approvals and Permits that are required in respect of the O&M Activities that:
 - a. Have been or will be applied for within the next 12-month period;

- b. Have previously been obtained and are in effect; and
- c. Have expired or been terminated during the prior 12-month period.

5.1.2. The Governmental Approvals List shall identify the:

- a. Date on which any Governmental Approval or Permit application was made;
- b. Date on which any Governmental Approval or Permit is expected to be or was obtained;
- c. Date on which any Governmental Approval or Permit expired or was terminated; and
- d. Anticipated date for any expiration or renewal for any Governmental Approval or Permit.

5.1.3. Without prejudice to the O&M Contractor's obligations under Sections 8.4 and 19 of the O&M Contract, as soon as reasonably practicable following a request to do so, the O&M Contract shall supply free of charge to the Developer a copy of any document or documents referred to in such list.

6. O&M QUALITY MANAGEMENT PLAN (OMQMP)

6.1. General

6.1.1. As part of the Maintenance Management Plan, the O&M Contractor shall provide an O&M Quality Management Plan (OMQMP). The OMQMP shall address each of the following:

- a. the O&M Contractor's approach to quality management including a description of quality assurance and quality control functions for validating the information, accuracy, and results of the OMQMP;
- b. a quality improvement process used to analyze Nonconforming Work and determine methods or processes to minimize or eliminate Nonconforming Work and Noncompliance Events associated with O&M Activities;
- c. the O&M Contractor's approach to reporting relationships and responsibilities including Developer and Department oversight;
- d. the O&M Contractor's approach to self-monitoring/self-reporting requirements for inspection, data validation procedures and tracking of Nonconforming Work and Noncompliance Events;
- e. the O&M Contractor's approach to preparing and reviewing Incident reports, non-conformance reports, traffic reports and maintenance work reports;
- f. the O&M Contractor's approach to training of the O&M Contractor's personnel on quality assurance and quality control functions; and
- g. a comprehensive records and document management system to provide access to records and to govern protocols for records retention.

6.2. Administrative Requirements

6.2.1. Intentionally Omitted.

6.2.2. Intentionally Omitted.

6.2.3. Intentionally Omitted.

6.2.4. Intentionally Omitted.

6.2.5. Intentionally Omitted.

6.2.6. Intentionally Omitted.

6.2.7. Quality Personnel

- a. The O&M Contractor's executive management shall have overall responsibility for success of the OMQMP. The O&M Contractor's executive management shall have the responsibility

to ensure that personnel performing quality control activities have the appropriate education, training, skills, and experience to meet the requirements of the O&M Contract.

- b. Intentionally Omitted.
- c. Intentionally Omitted.
- d. Intentionally Omitted.
- e. Intentionally Omitted.
- f. Intentionally Omitted.
- g. Intentionally Omitted.
- h. All PC testing personnel performing concrete and hot bituminous pavement process control tests shall meet the standards established in Section CP-10 of the CDOT *Field Materials Manual*.
- i. Intentionally Omitted.
- j. Intentionally Omitted.
- k. The O&M Contractor shall ensure that personnel performing O&M Activities shall have the education, training, skills, and experience to meet the requirements of the O&M Contract. The O&M Contractor shall maintain appropriate personnel records that may be examined by the Developer and the Department upon request.

6.2.8. Training

- a. The O&M Contractor shall establish and maintain documented procedures for identifying training needs and requirements and shall provide training of all personnel performing activities affecting quality. Personnel performing specific assigned tasks affecting quality shall be trained in the specific plans, processes, and procedures as assigned in the OMQMP (e.g., Materials Testing and Inspection Plan (MTIP), O&M Contractor auditing procedures, etc.).
- b. The O&M Contractor shall provide training to all personnel that may interface with the Developer's or the Department's oversight efforts (audit process) to ensure they understand their roles and responsibilities for cooperating and responding to audits.

6.3. Intentionally Omitted

6.4. Intentionally Omitted

6.5. Nonconforming Work

6.5.1. The OMQMP shall include procedures to develop and maintain a system to identify, control, remedy and report Nonconforming Work, including Nonconforming Work identified through the issuance of a NCN by the Department. The O&M Contractor shall remedy Nonconforming Work in accordance with the Approved OMQMP. The responsibility for review and authority for the disposition of Nonconforming Work shall be defined in the OMQMP. The O&M Contractor shall document the identification of Nonconforming Work by completing and submitting a NCR to the Developer (for submission to the Department) as soon as reasonably practicable, and in any event within 12 hours, after the O&M Contractor first becomes aware of the Nonconforming Work. Each NCR shall include:

- a. Identification of Nonconforming Work, including tagging work products;
- b. Evaluation of the Nonconforming Work, including the cause thereof;
- c. Recommendation for "reject" or "remedy" disposition (including, in the case of a "remedy" disposition, details of the recommended Nonconforming Work Remedy);
- d. Schedule for completion of any applicable Nonconforming Work Remedy, including, if the O&M Contractor considers that Appendix A-2 to Schedule 11 Operations and Maintenance

- Requirements applies to any Nonconforming Work that is O&M Work After Construction that fall within the O&M Activities, the remedy period for completion of such Nonconforming Work Remedy that applies pursuant to such Appendix;
- e. Signature lines for the Developer's Approval and, pursuant to the Project Agreement, the Department's Approval of (i) the disposition and (ii) in the case of a "remedy" disposition, the recommended Nonconforming Work Remedy, including the Schedule for completion thereof. The O&M Contractor shall not commence with any Nonconforming Work Remedy or progress beyond Nonconforming Work until the Department has provided its Approval in accordance with the Project Agreement;
 - f. If applicable:
 - i. a Corrective Action Plan detailing the proposed Corrective Action in relation to such Nonconforming Work and to prevent recurrence;
 - ii. responsibility for accomplishing Corrective Action through a Corrective Action Plan;
 - iii. Schedule for completion of Corrective Action;
 - g. Signature line for the Developer's Approval and, pursuant to the Project Agreement, the Department's Approval of any applicable Corrective Action Plan;
 - h. Intentionally Omitted;
 - i. Intentionally Omitted.
- 6.5.2. Within three Working Days after the issuance by the O&M Contractor of any initial NCR pursuant to Section 6.5.1 of this Schedule 8, the O&M Contractor shall submit an updated NCR to the Developer for Approval (and for submission to the Department for Approval in accordance with the Project Agreement) that recommends, as appropriate, a "reject" or "remedy" disposition for the Nonconforming Work and, in the case of a recommended "remedy" disposition, should identify the Nonconforming Work Remedy it proposes, together with the other information required to be included in such updated NCR in accordance with proviso B to Section 6.5.1 of this Schedule 8.
- 6.5.3. Prior to the submittal of any updated NCR to the Developer, the O&M Manager shall approve (a) the recommended disposition specified in such NCR and (b) in the case of a "remedy" disposition, the recommended Nonconforming Work Remedy.
- 6.5.4. The O&M Manager shall document the completion of any Nonconforming Work Remedy and, if applicable, any Corrective Action, once accomplished, and promptly notify the Developer (for notification of the Department) so that the Department can perform its verification.
- 6.5.5. The OMQMP shall include procedures for controlling the use of Nonconforming Work including the tagging of Nonconforming Work products. Nonconforming Work product tags shall only be removed by the originator of the NCR or the originator's supervisor, and only when the Department has confirmed that the Nonconforming Work product meets the requirements of the Project Agreement, as notified to the O&M Contractor by the Developer.
- 6.5.6. The O&M Contractor acknowledges and accepts that, pursuant to the Project Agreement, for verification and acceptance purposes, the Department will perform assessment of the O&M Activities. These efforts do not relieve the O&M Contractor of responsibility for checking all O&M Activities. The Department will forward all assessment reports and NCNs to the Developer, and the Developer shall provide all assessment reports pertaining to the O&M Activities to the O&M Contractor promptly upon receipt. NCNs may be:
- a. Level 1, identifying Nonconforming Work that represents an immediate or imminent health or safety hazard, nuisance or other similar immediate or imminent risk to Users or workers or an immediate or imminent risk of structural failure, damage to a third party's property or equipment or damage to the Environment; or
 - b. Level 2, identifying any other category of Nonconforming Work.

- 6.5.7. Within 12 hours of the receipt of a Level 1 NCN and within three Working Days of receipt of a Level 2 NCN by the O&M Contractor, the O&M Contractor shall submit an NCR (which shall include all information specified in Sections 6.5.1.a through i of this Schedule 8 in respect of the Nonconforming Work identified in the NCN) to Developer for submission to the Department for Approval in accordance with the Project Agreement. The O&M Contractor shall describe in the QMP its approach and methodology for resolving and responding to any NCNs issued by the Department.
- 6.5.8. Corrective and Preventative Action
- a. The OMQMP shall describe corrective and preventative action (“Corrective Action”) procedures that the O&M Contractor shall use to identify and improve processes and remedy issues that produce, or may produce, systemic Nonconforming Work. The O&M Contractor’s Corrective Action procedures shall include:
 - i. Methods to investigate the cause of systemic Nonconforming Work and to determine what Corrective Action is needed to prevent recurrence;
 - ii. Methods to analyze all processes, O&M Activities operations, quality records, service reports, and Department assessments/testing to detect and eliminate the possibility of systemic Nonconforming Work from occurring;
 - iii. Methods to prioritize Corrective Action efforts based upon the level of risk to the quality of the O&M Activities;
 - iv. Controls to ensure that effective Corrective Action is taken when the need is identified; and
 - v. Methods to implement and record changes in procedures resulting from any Corrective Action.
 - b. If systemic Nonconforming Work is identified by the O&M Contractor or identified by the Developer or the Department by the issuance of a corrective action request (CAR) notice to the O&M Contractor, the O&M Contractor shall submit a Corrective Action Plan to the Developer for submission to the Department in accordance with the Project Agreement.
- 6.5.9. Intentionally Omitted
- 6.5.10. The provisions of this Section 6.5 are without prejudice to the provisions of Schedule 6 Performance Mechanism.

6.6. Quality Assurance Oversight

6.6.1. Department Quality Oversight

The O&M Contractor acknowledges and accepts that:

- a. The Department retains the responsibility for acceptance of the O&M Activities as required in Title 23, Code of Federal Regulations, Part 637.
- b. The Department will periodically audit the O&M Contractor’s Quality Management activities, including conducting independent verification sampling and testing to assess the O&M Contractor’s compliance with the requirements of the Project Agreement (which the O&M Contractor agrees have been passed down pursuant to this Agreement). The Department reviews of sampled O&M Activities for Project Agreement compliance are defined as verification reviews. The four types of the Department verification reviews are:
 - i. Design verification reviews: The Department will perform design verification reviews on the products of design (drawings, specifications, and other design deliverables) on an ongoing basis during the Work. The Developer shall submit documents for design verification reviews to the Department for Acceptance a minimum of five Working Days in advance of review meeting.

- ii. Construction verification Inspections: The Department will perform construction verification inspections on construction activities.
 - iii. Construction verification Testing: The Department will perform sampling and Testing of materials to validate the Developer IQC testing program. Verification Test results will be stored in the QRD.
 - iv. Process Audits: The Department will perform process audits on the implementation of all Developer Work activities, excluding design and construction. Such activities may include the requirements of the Project Agreement, such as public information, maintenance of traffic, environmental compliance, safety, project management processes, and meeting the requirements of the Approved QMP.
- c. Verification reviews will entail the collection and documentation of objective evidence to determine whether the requirements of the Project Agreement have been met. The results of the Department verification reviews will be recorded by the Department and will be documented within the Department's QRD. Any NCNs identified by the Department require a response within the QRD.
- d. Department will provide the Developer, and the Developer will provide the O&M Contractor, access to the Department's QRD application to review, and the O&M Contractor will provide any information necessary for the Developer to respond to, observations made during Department Quality Oversight activities. The O&M Contractor is required to utilize the Department's QRD application to record all material test quality records, and to provide the Developer with any information necessary for the Developer to respond to Department generated observations. The O&M Contractor is given the option of either directly entering all PC/IQC observations and material test results into the Department's QRD application or providing the Department with data collected during PC/IQC efforts in an electronic format compatible for batch upload into Department's QRD application. Department generated observations will be identified either as conforming or nonconforming to related requirements of the Project Agreement, and any nonconforming observation by the Department shall be deemed a nonconforming observation hereunder. Department observations will be presented to Developer through Department Quality Oversight Verification Reports, and the Developer shall provide the any Department Quality Oversight Verification Reports applicable to the O&M Activities to the O&M Contractor.

6.6.2. Department Owner Verification Testing

The O&M Contractor acknowledges and accepts that pursuant to the Project Agreement, the Department will perform periodic verification tests to ensure that the O&M Contractor's materials meet the requirements of the Project Agreement (which the O&M Contractor agrees have been passed down pursuant to this Agreement). The Department will enter verification test results in the QRD. The Department will perform a statistical analysis to ensure that the O&M Contractor's IQC test results correlate statistically with the Department verification test results and meet the requirements of the Project Agreement. If the Department determines that the compared test results do not correlate, the Department will follow procedures outlined in the CDOT *Field Materials Manual* for Non-Validation and Status of Material Quality.

6.6.3. Independent Assurance

The O&M Contractor acknowledges and accepts that:

- a. The Department will perform Independent Assurance tests to ensure that:
 - i. O&M Contractor personnel are trained and certified and demonstrate that they understand the test procedures they are performing;
 - ii. Department verification personnel are trained and certified and demonstrate that they understand the test procedures they are performing;

- iii. The test equipment used by the O&M Contractor personnel, and Department verification personnel, is calibrated; and
- iv. Split sample test results correlate.
- b. Independent Assurance test results will also be used as referee tests to assess statistically significant differences, determined by the Department in its sole discretion, between O&M Contractor tests and the Department verification test results.
- c. IAT will be on a project basis and not a system basis.

6.6.4. Governmental Authority Inspections

Governmental Authorities shall have the right to inspect the O&M Activities, provided that the Governmental Authority has jurisdiction over the O&M Activities and as required by Law.

6.7. Deliverable Requirements

6.7.1. Intentionally Omitted

6.7.2. Intentionally Omitted

6.7.3. Document and Data Approval

The O&M Contractor shall ensure that all deliverables include a signed and dated certification by the originator of the deliverables and that the deliverable is complete and meets the requirements of the O&M Contract.

6.7.4. Document and Data Changes

The O&M Contractor shall ensure that any changes to deliverables provided to the Developer as revised are in a format that can enable changes to be readily apparent and trackable (e.g., documents use the redline/strikeout method).

6.7.5. Intentionally Omitted

7. SAFETY MANAGEMENT

7.1. General

7.1.1. From the Substantial Completion Date through the expiration of the O&M Term, the O&M Contractor shall be responsible for the establishment, control, direction, and implementation of a comprehensive safety plan that protects the safety of its personnel and the general public affected by the Project.

7.1.2. The O&M Contractor shall review and provide comments to the Developer's SMP to permit the SMP to fully describe the O&M Contractor's policies, plans, training programs, Site controls, and incident response plans to ensure the health and safety of personnel involved in the Project and the general public affected by the Project from the Substantial Completion Date through the expiration of the O&M Term.

7.2. Intentionally Omitted

7.3. Submittal

7.3.1. Intentionally Omitted.

7.3.2. O&M Contractor staff must be trained on the elements of the SMP Accepted by the Department.

8. DURABILITY PLAN

8.1. The O&M Contractor shall review and provide comments to the Developer's Durability Plan addressing durability for all Residual Elements with a specified minimum Residual Life of forty (40) years or greater.

8.2. Following Substantial Completion the Durability Plan shall be reviewed annually by the O&M Contractor to ensure that it is consistent with the Maintenance Management Plan and takes

account of improvements in industry practice in testing and forecasting Residual Life. Any changes to testing methodologies shall demonstrate a correlation with the superseded methodology so that previous measurements remain relevant to the accurate prediction of the degradation of the relevant Residual Element. The O&M Contractor shall make any updates required and submit to the Developer for Acceptance.

8.3. The Durability Plan shall indicate the maintenance and monitoring strategy, outline the process for establishing the Residual Life in order to fulfill the requirements of Schedule 12 (Handback Requirements) to the Project Agreement for each relevant Residual Element, and shall describe a methodology for the replacement of life expired relevant Residual Elements.

8.4. The Durability Plan shall include the following, at a minimum:

- a. Identification of each relevant Residual Element with the corresponding environmental exposure conditions for each Element (e.g., buried, submerged, exposed to atmosphere, exposed to corrosive chemicals). Some Elements may be exposed to more than 1 environmental condition (e.g., foundations in water table, foundations in areas with petroleum contamination), which might require different corrosion considerations for each exposure;
- b. Identification of relevant degradation and protective mechanisms for each structural Element, quantifying the degradation processes and resistances to these processes with respect to time. The time-related changes in performance for each relevant Residual Element at intervals not exceeding 10 years up to the end of the required Residual Life. The design life shall be predicted using deterministic models, published industry guidance and test data, allowing for the environmental conditions, and any proposed protective measures. The models and all assumptions shall be clearly indicated in the plan;
- c. Description of measures taken during construction to ensure the assumed quality of construction is achieved (e.g., uniform compaction of embankment, adequate concrete cover, proper curing, etc.);
- d. Summary of the above information, for each Element, in a tabular format and an estimate of life-cycle costs for the Structure;
- e. List of manufacturers of all proposed durability enhancement measures, including coatings, inhibitors, sealers, and membranes;
- f. Schedule for corrosion inspection of structural Elements indicating the parameters to be measured in order to confirm the underlying performance relative to that predicted in the design, gathered at intervals of not more than 10 years from Substantial Completion; and
- g. Proposed maintenance Schedule for items/materials that could be affected by corrosion.

8.5. Cathodic protection shall not be used to mitigate expected corrosion effects.

8.6. For each Structure, the O&M Contractor shall prepare an addendum to the Durability Plan indicating the impact of the as-built condition (including Nonconforming Work and testing data) on the predicted design service life and maintenance and inspection regime.

9. MEETINGS

9.1. Meeting Minutes

Unless notified otherwise by the Developer, the O&M Contractor shall be responsible for developing meeting minutes for all Project related meetings between the O&M Contractor, the Developer and the Department or the Enterprises, between the O&M Contractor, the Developer and counterparties to Third Party Agreements, and between the O&M Contractor, the Developer and other Governmental Agencies and stakeholders. All meeting minutes shall be submitted to the Developer within three Working Days following the meeting either for Acceptance where expressly provided in the O&M Contract or otherwise for Information.

9.2. Task Force Meetings

- 9.2.1. At a minimum, the O&M Contractor shall participate and take meeting minutes of task force meetings for the following disciplines to facilitate “over the shoulder” review of the design:
- a. Drainage;
 - b. Roadway;
 - c. Structures;
 - d. Traffic/ITS/tolling;
 - e. Maintenance of Traffic (refer to Schedule 10 to the Project Agreement, Section 2 Maintenance of Traffic for further requirements related to such meetings);
 - f. Fire and Life Safety;
 - g. Cover;
 - h. Utilities;
 - i. Right-of-Way; and
 - j. Environmental (refer to Schedule 17 (*Environmental Requirements*) for further requirements related to such meetings).
- 9.2.2. Meeting minutes for each task force shall be provided to the Developer within three Working Days following the meeting for Acceptance.

9.3. Intentionally Omitted

9.4. Safety Meetings

The O&M Contractor shall conduct regularly scheduled project safety meetings, tool box talks, etc., as specified in the SMP.

9.5. Quality Meetings

The O&M Contractor shall conduct weekly quality meetings with representatives from Quality Control, Quality Assurance, and the Department, in accordance with this Schedule 8.

10. INTENTIONALLY OMITTED

11. INTENTIONALLY OMITTED

12. INTENTIONALLY OMITTED

13. DOCUMENT MANAGEMENT

13.1. General Requirements

13.1.1. The O&M Contractor shall establish and maintain its own Document Control System (DCS) to store and record all correspondence, drawings, progress reports, technical reports, specifications, deliverables, calculations, and administrative documents generated under the O&M Contract. The O&M Contractor shall also establish correspondence routing, filing, control, and retrieval methods that are compatible with the Department’s DCS. Document Control, storage, and retrieval methods shall include the use of both hard copies and electronic records. The O&M Contractor DCS shall handle all documents related to the O&M Activities.

13.1.2. Intentionally Omitted.

13.1.3. To the extent that the O&M Contractor is permitted to directly communicate with the Department pursuant to the O&M Contract, the O&M Contractor shall use the Department’s Aconex system when communicating with the Department. This includes use for all Document Control related documents, transmitting deliverables, and email correspondence purposes for the duration of the Project. The Aconex system will be used by all participants engaged on this Project, including Subcontractors of any tier, Suppliers and their subsequent legal successors in title. It is the O&M

Contractor's responsibility to ensure consistency with this procedure subject to the provisions of Section 1.2.7 of Schedule 15.

- 13.1.4. Access to the Department's Aconex system and web-based certified and payroll and contractor compliance system will be provided to the O&M Contractor and all Subcontractors free of charge for the duration of the O&M Term.
- 13.1.5. The Department, at its sole discretion, may elect to use an alternative DCS during the course of the O&M Term. In such case, the O&M Contractor shall use this alternative DCS for all correspondence with the Department as described herein.
- 13.1.6. All correspondence of the O&M Contractor to and from the Department and its representatives with respect to the Project shall be categorized and serialized by a method Accepted by the Department. The O&M Contractor shall maintain separate incoming and outgoing correspondence logs. O&M Contractor correspondence serialization shall be submitted for Acceptance by the Developer prior to NTP1.
- 13.1.7. The following is the minimum criteria that the O&M Contractor's DCS shall provide:
 - a. Access shall be provided to the Developer and the Department on a real-time basis that can only be attained through the Internet. The O&M Contractor shall maintain industry standards for Internet connectivity as determined by the Department.
 - b. The O&M Contractor's incoming and outgoing correspondence logs shall be available to the Developer and the Department within 12 hours.
 - c. Documents within the O&M Contractor's DCS must be transferable to the Department's DCS. The transfer of documents shall be performed through the Internet.
 - d. Intentionally Omitted.
 - e. Process Control (PC) and Independent Quality Control (IQC) data, such as test results, daily inspection records, non-conformance reports, etc., shall be stored by the O&M Contractor within their DCS. Real-time access by the Developer and the Department to PC/IQC data shall be required. PC/IQC data shall be transferred to the Department's DCS on a monthly basis.

14. DELIVERABLES

At a minimum, the O&M Contractor shall submit the following to the Developer for Information, Acceptance, or Approval in accordance with the timeframes specified below:

Table 2 Deliverables

Deliverable	Information, Acceptance, or Approval	Schedule
Maintenance Management Plan (MMP) and Operations Management Plan (OMP)	Acceptance	Prior to the issuance of NTP1, updated annually
Updates to Stage 1 OMQMP	Approval	As needed to document changes to quality program
Comments to Developer's Durability Plan	Acceptance	30 Calendar Days after the issuance of NTP1; following completion of final plan sets and prior to Substantial Completion; annually thereafter

Central 70 Project: Maintenance Contract
 Schedule 8 (Project Administration)

Deliverable	Information, Acceptance, or Approval	Schedule
Meeting Minutes to be submitted for Acceptance per the Project Agreement	Acceptance	Three Working Days after meeting
Meeting minutes, other than those required to be Accepted	Information	Three Working Days after meeting
Task force meeting minutes	Acceptance	Three Working Days after meeting
IQC test measurements and test results	Information	Within 12 hours following inspection or test completion
Nonconformance Report	Approval	As required by <u>Section 6.5</u> of this <u>Schedule 8</u>
Nonconforming Work log	Acceptance	Weekly
Corrective Action Plan	Approval	As required by <u>Section 6.5</u> of this <u>Schedule 8</u>

15. APPENDICES

Appendix A Intentionally Omitted

Appendix B Intentionally Omitted

Appendix A
Intentionally Omitted

Appendix B
Intentionally Omitted

Schedule 9 Submittals

1. Definitions

The following terms have the respective meanings set out below for all purposes of this Schedule 9:

“Deliverable for Acceptance” means any Deliverable that, pursuant to this Agreement, must be submitted either:

- (a) for Acceptance; or
- (b) for consent, approval or like assent, to the extent that the Developer, pursuant to the express provisions of this Agreement, required to act reasonably in deciding whether to give such consent, approval or like assent.

“Deliverable for Approval” means any Deliverable that, pursuant to this Agreement, must be submitted either:

- (a) for Approval; or
- (b) for consent, approval or like assent, to the extent that such is, pursuant to the express provisions of this Agreement or pursuant to Section 2.2.4.b of the Maintenance Contract in the Developer’s discretion.

“Deliverable for Information” means any Deliverable that, pursuant to this Agreement, must be submitted by the O&M Contractor for Information.

“DRTL” has the meaning given to it in Section 7(a) of this Schedule 9.

“Reviewable Deliverable” means any Deliverable that is a Deliverable for Approval, a Deliverable for Acceptance or a Deliverable for Information.

2. General

The O&M Contractor acknowledges the rights and obligations of the Developer and the Enterprises under Schedule 9 (Submittals) to the Project Agreement. The O&M Contractor shall be responsible for the provision of all notices, reports, submissions, approvals and other matters required under the Project Agreement insofar as they relate to the O&M Activities and will obtain and submit the same to the Developer (for submission by the Developer to the Enterprises) in accordance with this Agreement at such times as may be necessary to preserve the Developer’s rights under the Project Agreement and to ensure the Developer is not in breach of its obligations under the Project Agreement or the Law. All such notices and other matters shall be provided to the Developer for review two (2) Working Days prior to their submission to the Enterprises. The O&M Contractor agrees that no information that must be provided by the O&M Contractor pursuant to this Agreement shall be submitted to the Enterprises, the Lenders’ Technical Adviser or any other third party without it first being submitted to the Developer for review and comment, provided that if any such notice, report, submission, approval and other matter constitutes or includes a deviation or any material change to the Proposal Extracts or the Reference Design, such notice, report, submission, approval and other matter shall be subjected to the Developer’s Approval. With respect to any notice, report, submission, approval and other matter subject to review and comment by the Developer, the O&M Contractor shall incorporate all comments in such notice, report, submission, approval and other matter, and shall thereafter resubmit any such notice, report, submission, approval and other matter to the Developer for review and comment.

3. Intentionally Omitted

4. Submission of Deliverables

- (a) Each Reviewable Deliverable submission shall:

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Schedule 9 (Submittals)

- (i) include a signed and dated certification by the O&M Contractor in form and substance reasonably Acceptable to the Developer, that such Reviewable Deliverable is complete, is suitable for the purpose for which it is submitted and meets the requirements of this Agreement; and
 - (ii) be accompanied by such supplemental reference information and materials as are reasonably requested by the Developer in advance.
- (b) The O&M Contractor may resubmit any previously submitted Deliverable for Approval or Deliverable for Acceptance, as applicable, that was not previously Approved or Accepted, or otherwise consented to, approved or assented to, without conditions, provided that O&M Contractor clearly identifies and documents in its resubmission how all prior conditions and comments have been addressed.

5. **Intentionally Omitted**

6. **Intentionally Omitted**

7. **Tracking of Deliverables**

- (a) On the Substantial Completion Date, the O&M Contractor shall assume responsibility for updating and maintaining, the Deliverable Requirements Tracking List (“DRTL”).
- (b) The DRTL shall be updated and maintained so as to continue to satisfy each requirement set forth in Section 7(b) of Schedule 9 (*Submittals*) to the Project Agreement.
- (c) The O&M Contractor shall use the DRTL to track the status of all Reviewable Deliverables, including all submissions and resubmissions and responses from the Developer and the Enterprises.
- (d) The O&M Contractor shall deliver to the Developer for Acceptance (and for delivery to the Enterprises for their Acceptance) monthly updates to the DRTL to track the status of all Reviewable Deliverables, including updates to the DRTL as may be necessary to reflect the inclusion of any Reviewable Deliverable that was not previously included in the DRTL.

8. **Sequencing**

- (a) The O&M Contractor shall use Reasonable Efforts to schedule, prioritize and coordinate all Reviewable Deliverables to allow an efficient and orderly Reviewable Deliverables review process pursuant to this Schedule 9 and the DRTL.
- (b) The O&M Contractor acknowledges and agrees that, pursuant to the Project Agreement, to the extent that the O&M Contractor exceeds any of the limits on Reviewable Deliverables set out in Schedule 9 (*Submittals*) to the Project Agreement or the DRTL, the Department or the Enterprises, as applicable, shall (acting reasonably and taking into account the number and nature of any other Reviewable Deliverables that it and/or they may concurrently be in the process of reviewing) determine a time period for the review of the Reviewable Deliverables that exceed such limit.
- (c) The O&M Contractor acknowledges and agrees that, pursuant to the Project Agreement, neither the Department nor the Enterprises shall be obligated to concurrently review five or more Reviewable Deliverables that require review by the same specialty experts (as reasonably determined by the Department or the Enterprises pursuant to the Project Agreement) unless the Department or the Enterprises has or have previously Approved such concurrent review.

9. **Intentionally Omitted**

Schedule 10
Intentionally Omitted

Schedule 10A
Intentionally Omitted

Schedule 10B
Intentionally Omitted

Schedule 11
Operations and Maintenance Requirements

This Agreement contains a number of references to Schedule 11 (*Operations and Maintenance Requirements*). The Developer and the O&M Contractor hereby acknowledge and agree that Schedule 11 (*Operations and Maintenance Requirements*) to the Project Agreement is incorporated herein by reference, provided, however, that for the purposes of this Agreement, Schedule 11 (*Operations and Maintenance Requirements*) to the Project Agreement shall be read, construed, and interpreted such that (1) references to the Developer therein shall be references to the O&M Contractor, (2) references to the Enterprises, the Department or CDOT therein shall be references to the Developer, the Enterprises, the Department or CDOT, as appropriate, and (3) the O&M Contractor shall observe, perform, comply with and assume as part of its obligations under this Agreement all of the Developer's obligations and liabilities under Schedule 11 (*Operations and Maintenance Requirements*) to the Project Agreement to the extent such obligations and liabilities relate to the O&M Activities (as if the same were expressly referred to herein as obligations and liabilities of the O&M Contractor *mutatis mutandis*).

Schedule 12
Intentionally Omitted

Schedule 13
Required Insurances

1. INTENTIONALLY OMITTED

2. OPERATING PERIOD INSURANCES

From the Substantial Completion Date for the duration of the O&M Term, the O&M Contractor will obtain and maintain, or cause to be obtained and maintained, the Insurance Policies with respect to the O&M Work After Construction and the Project described in Sections 2.2, 2.3, and 2.5 of this Schedule 13. From the Substantial Completion Date for the duration of the O&M Term, the Developer will obtain and maintain, or cause to be obtained and maintained, the Insurance Policies with respect to the O&M Work After Construction and the Project described in Sections 2.1, 2.4, and 2.6, of this Schedule 13.

2.1. "All Risks" Property

"All Risks" property insurance with no co-insurance including the following perils: loss or damage by fire, collapse, lightning, windstorm, tornado, flood, earthquake, hail, explosion, riot, vandalism and malicious mischief, civil commotion, aircraft, vehicle impact, terrorism (both domestic and foreign acts of terrorism), smoke and such other risks as are usual to a similarly situated project, such insurance to:

- a. be in an amount equal to the lesser of:
 - i. the full replacement cost of the O&M Work After Construction and the Project, including on and off-site fabrication, installation, storage and staging areas; and
 - ii. the Probable Maximum Loss for the Work and the Project (and, with respect to any sublimits, subject to Sections 2.2.b, 2.1.c.iv and 2.1.c.vi of this Schedule 13, the Probable Maximum Loss in respect of the relevant peril), including on and off-site fabrication, installation, storage and staging areas;
- b. if such insurance places a sublimit on flood coverage, include a sublimit which shall be no less than the greater of:
 - i. \$100,000,000; and
 - ii. the Probable Maximum Loss in respect of such peril;
- c. include coverage for the following, within the limits specified below:
 - i. business interruption on a gross income basis for the greater of:
 - A. 12 months of delay; and
 - B. the Probable Maximum Delay;
 - ii. boiler and machinery perils including machinery breakdown;
 - iii. property in transit (in-land only) and unnamed locations;
 - iv. extra/expediting expenses (with a minimum sublimit of \$25,000,000);
 - v. off premises services interruption;
 - vi. professional fees (with a minimum sublimit of \$10,000,000);
 - vii. valuable papers;
 - viii. prevention of access (with a minimum limit of eight weeks);
 - ix. ingress /egress (with a minimum limit of eight weeks);
- d. provide for interim payments in the event of any loss; and
- e. name the Lenders as loss payees as their interests may appear.

2.2. Commercial General Liability

Commercial general liability insurance (together with any excess or umbrella liability) against claims for personal injury (including bodily injury and death) and property damage or loss (including liabilities as a result of repairs and alterations) however arising occurring with respect to the O&M Work After Construction or the Project, including on and off-site fabrication, installation, storage and staging areas, such insurance to:

- a. be on an occurrence form (as that term is used in the insurance industry) with a combined single limit of not less than \$100,000,000 per occurrence and in the aggregate per project, which may be provided in a layered placement, with the layers excess of the primary general liability to provide excess automobile liability and employers' liability; and
- b. include coverage for:
 - i. premises and operations liability maintained through the applicable statute of repose;
 - ii. products and completed operation liability;
 - iii. independent contractors;
 - iv. blanket contractual liability for all contracts;
 - v. sudden and accidental pollution;
 - vi. broad form property damage;
 - vii. contingent employers' liability;
 - viii. non-owned automobile liability (provided that the limits, scope and amount of coverage are not less than would be provided by the Insurance Policy required pursuant to this Section 2.2, at the option of the O&M Contractor such coverage may instead be provided under the Insurance Policy required pursuant to Section 2.5 of this Schedule 13);
 - ix. cross liability and severability of interests clause; and
 - x. employees as additional insureds.

2.3. Workers' Compensation and Employers' Liability Insurance

Workers' compensation insurance, as required by the statutory limits of the State, and employers' liability with a limit of no less than \$1,000,000 and excess liability coverage.

2.4. Pollution Liability

Pollution and environmental impairment liability insurance for the O&M Work After Construction and Project, which may be written on a claims made form, such insurance to:

- a. be with limits of not less than \$10,000,000 per occurrence and \$10,000,000 annual aggregate; and
- b. include coverage for:
 - i. environmental impairment liability;
 - ii. third party bodily injury;
 - iii. property damage liability (including remediation and clean-up costs);
 - iv. disposal site and transportation extensions; and
 - v. underground storage tanks.

2.5. Automobile Liability

Automobile liability insurance on any owned, non-owned and hired automobile used in connection with the O&M Work After Construction and the Project with a limit of not less than \$10,000,000 per occurrence and with the Motor Carrier Act endorsement (MCS-90).

2.6. Railroad Liability and Railroad Protective Liability

If such coverage is not already provided under the commercial general liability insurance required pursuant to Section 2.1 of this Schedule 13, railroad liability and railroad protective liability insurance which coverage shall be with limits of not less than \$5,000,000 per occurrence and \$10,000,000 in the aggregate or, if higher, such other limits as required by UPRR, BNSF or DRIR in connection with the O&M Work After Construction and the Project.

2.7. Insureds

- a. The Developer Insurance Policies required pursuant to Sections 2.1 and 2.4 of this Schedule 13 must include the Developer and the O&M Contractor as named insureds.
- b. The O&M Insurance Policies required pursuant to Sections 2.2, 2.3, and 2.5 of this Schedule 13 must include the O&M Contractor as named insured and, except for the Insurance Policy described in Section 2.3 of this Schedule 13, must include the Developer as an additional insured.
- c. All Insurance Policies required pursuant to this Section 2 of this Schedule 13, other than the policies required pursuant to Sections 2.3 and 2.6 of this Schedule 13, must include the Specified Additional Insureds as additional insureds.

2.8. Indexation

- a. All Dollar figures in the Insurance Policy requirements set out in Section 2.1 of this Schedule 13 shall be indexed annually pursuant to Section 2.3 of the Maintenance Contract.
- b. All Dollar limits of liability in the Insurance Policy requirements set out in Sections 2.2, 2.4 and 2.5 of this Schedule 13 shall be indexed:
 - i. on the fifth anniversary of the Substantial Completion Date with respect to the preceding five year period; and
 - ii. on each fifth anniversary of the initial indexation pursuant to Section 2.8.b.i of this Schedule 13 with respect to the preceding five year period,in either case, pursuant to Section 2.3 of the Maintenance Contract.
- c. After indexation has been applied from time to time, the O&M Contractor's obligation shall be to take out and maintain, or to cause the obtaining and maintenance of, insurance pursuant to Section 25 of the Maintenance Contract and this Schedule 13 where the limits are as close to and in excess of the indexed values as is reasonably obtainable in the insurance market, provided that such obligation shall only apply to newly placed or renewed Insurance Policies and not to the Insurance Policies in effect at such time as the indexation applies.

3. GENERAL REQUIREMENTS

3.1. Intentionally Omitted.

3.2. Deductibles

Each Insurance Policy may include deductibles and, for certainty, shall not include any self-insured retentions except that a self-insured retention may be utilized on the Insurance Policies required pursuant to Section 2.4 of this Schedule 13.

3.3. Placement on Occurrence Basis

Except for the Insurance Policies required pursuant to Section 2.4 of this Schedule 13, all liability insurance Policies shall be placed on an occurrence and not a claims made basis.

3.4. Reinstatement Work and Loss Payee Provisions

Any loss payee provision in any Insurance Policy shall be consistent and not conflict with the requirements of Section 25.5 of the Project Agreement.

3.5. Maintenance Yard

All references in this Schedule 13 to “the O&M Work After Construction and the Project” (or statements to similar effect) shall be interpreted to include, with effect from the Snow and Ice Control Commencement Date, the Maintenance Yard (including activities performed thereat).

Schedule 14
Strategic Communications

The O&M Contractor acknowledges the rights and obligations of the Developer and the Enterprises under Schedule 14 (Strategic Communications) to the Project Agreement. The O&M Contractor shall promptly provide the Developer with all assistance reasonably requested by the Developer in order for the Developer to preserve its rights under the Project Agreement and to ensure the Developer is not in breach of its obligations under Schedule 14 (Strategic Communications) to the Project Agreement.

**Schedule 15
Federal and State Requirements**

1. GENERAL REQUIREMENTS

1.1. Intentionally Omitted

1.2. Meetings and Reporting

1.2.1. Intentionally Omitted

1.2.2. Intentionally Omitted

1.2.3. Intentionally Omitted

1.2.4. Intentionally Omitted

1.2.5. Operating Period Monthly Reporting Requirement

As part of its monthly Progress Report submissions made during the Operating Period pursuant to Section 4.1 of Schedule 8 (Project Administration), the O&M Contractor shall submit all reports referenced in this Schedule 15 as applicable during the Operating Period, including as necessary to comply with the Operating Period reporting requirements contained in Appendix C to this Schedule 15 and the Davis-Bacon reporting requirements contained in Section 2.1.3 of this Schedule 15.

1.2.6. Operating Period Annual Progress Review

During the Operating Period the O&M Contractor shall participate in an annual review (on a Contract Year basis) of its progress toward achieving the Small Business and Workforce Development Goals applicable during the Operating Period. Additional requirements for such reviews are contained in Appendix C to this Schedule 15. Such review shall also consider the O&M Contractor's compliance with its obligations under Section 7 of this Schedule 15.

1.2.7. Web-based compliance system

During the Operating Period, the O&M Contractor shall use B2Gnow and LCPtracker, the Enterprises' web-based certified payroll and contractor compliance system, to submit Deliverables required by this Schedule 15 and to report payments to Subcontractors so as to document compliance with Part 2, Section 17.5 of this Agreement. For any required Deliverable that is not supported by the Enterprises' B2Gnow or LCPtracker software, the applicable Deliverable shall be submitted to the Developer in a form mutually agreed between the Parties (both acting reasonably).

1.3. Deductions

1.3.1. Intentionally Omitted

1.3.2. Operating Period

Failure to Achieve Routine O&M Work ESB Goal

- a. The failure by the O&M Contractor both (a) to have achieved the Routine O&M Work ESB Goal, as of the last date in any five Contract Year period in respect of which the Routine O&M Work ESB Goal is assessed pursuant to Section 6.2.2 of this Schedule 15, and (b) to have made good faith efforts to achieve such goal shall result in a payment deduction pursuant to Schedule 6 (Performance Mechanism). The deduction shall be determined as follows (with the result to be rounded to the nearest whole number):

Routine O&M Work ESB Goal – Value of Routine O&M ESB Work calculated in accordance with Section 3.b of Part I of Appendix C to this Schedule 15 = Amount of deduction to be assessed.

2. LABOR, EQUAL EMPLOYMENT OPPORTUNITY AND NON-DISCRIMINATION

2.1. Davis-Bacon and Related Acts (DBRA) Compliance

2.1.1. Application to all Construction, Alteration and Repairs

The Davis-Bacon and Related Acts (40 USC §276a; 29 CFR Parts 1, 3, 5, 6 and 7) (the “DBRA”) apply to the O&M Contractor and Subcontractors performing on federally funded or assisted contracts in excess of \$2,000 for the construction, alteration, or repair (including painting and decorating) of public buildings or public works. The O&M Contractor shall ensure that the requirements of the DBRA, to the extent applicable to the Work being performed, are implemented on all Subcontracts throughout the O&M Term.

2.1.2. Wage Rates

The minimum wage rates to be used for purposes of compliance with Section 2.1.1 of this Schedule 15 throughout the Operating Period will be established by the U.S. Department of Labor . Such yearly updated minimum wage rates shall be notified to the O&M Contractor at least 60 Calendar Days prior to the commencement of each Contract Year during the Operating Period. The first such notification shall be made prior to the Substantial Completion Date and shall apply to the Contract Year during which the Substantial Completion Date occurs.

2.1.3. Compliance and Reporting

The O&M Contractor shall ensure that all employees performing work subject to DBRA classifications and rates working during the O&M Term receive the minimum compensation required in accordance with DBRA and other Law. The O&M Contractor shall provide weekly certified payrolls to the Developer throughout the O&M Term for all activities subject to DBRA. The O&M Contractor shall, and shall ensure that each of its Subcontractors and each of their respective Subcontractors shall, pursuant to Part 2, Section 19 of this Agreement, maintain and make available for review, inspection and audit by the Department and the Developer all such Project Records as are necessary to document compliance with DBRA and other law.

2.2. Equal Employment Opportunity

2.2.1. Executive Order 11246

The O&M Contractor shall, and shall ensure that all Subcontractors shall, comply with all Laws that prohibit certain employment practices. In furtherance of this and in accordance with Executive Order 11246 and Appendix E to this Schedule 15, the O&M Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The provisions contained in Appendix E to this Schedule 15 shall be included in all Subcontracts without modification except as appropriate to identify the Subcontractor who will be subject to the provisions of such Subcontract.

2.2.2. Affirmative Action

The O&M Contractor shall take affirmative action to ensure that applicants for employment and employees are treated without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. The O&M Contractor shall, and shall ensure that all Subcontractors shall, comply with CDOT’s Standard Special Provision “Affirmative Action Requirements Equal Employment Opportunity” (attached as Appendix F to this Schedule 15). Appendix F shall be included in all Subcontracts without modification except as appropriate to identify the Subcontractor who will be subject to the provisions of such Subcontract.

2.3. Title VI of the Civil Rights Act and Related Statutes

2.3.1. Non-Discrimination Provisions

Pursuant to Title VI of the Civil Rights Act of 1964 and related statutes, the O&M Contractor shall not, and shall ensure that none of the Subcontractors shall, exclude from participation in the O&M Work After Construction, deny the benefits of, or subject to discrimination, any person in the

United States on the ground of race, color, national origin, sex, age or disability. The O&M Contractor shall, and shall ensure that all Subcontractors shall, comply with all applicable Federal and State nondiscrimination Law and with the required terms of USDOT Order No. 1050.2A "USDOT Standard Title VI/Non-Discrimination Assurances, which are set out in Appendix G to this Schedule 15. The O&M Contractor shall include the clauses contained in Parts I through IV of Appendix G in all Subcontracts without modification except as appropriate to identify the Subcontractor who will be subject to the provisions of such Subcontract.

2.3.2. Notice and Complaints

The O&M Contractor shall, and shall ensure that all Subcontractors shall, report all complaints alleging discrimination on the grounds of race, color, national origin, sex, age or disability to the Developer. In all facilities open to the public and on any websites (or equivalent digital media) maintained by the O&M Contractor for the Project, the O&M Contractor shall post and make available to the public CDOT's non-discrimination notice and complaint procedures.

2.4. Americans with Disabilities Act

Pursuant to Federal regulations promulgated under the authority of the Americans with Disabilities Act, 28 CFR § 35.101 et seq., the O&M Contractor, and each of its Subcontractors and each of their Subcontractors, understands and agrees that no individual with a disability shall, on the basis of the disability, be excluded from participation in this Agreement or from activities provided for under this Agreement. As a condition of accepting and executing this Agreement, the O&M Contractor agrees to comply with the "General Prohibitions Against Discrimination," 28 CFR § 35.130, and all other regulations promulgated under Title II of the Americans with Disabilities Act which are applicable to the benefits, services, programs, and activities provided by CDOT through contracts with outside contractors.

2.5. Intentionally Omitted

3. INTENTIONALLY OMITTED

4. GENERAL FEDERAL REQUIREMENTS

4.1. Non-Collusion

The provisions in this Section 4.1 are applicable to all contracts except contracts for Federal Aid Secondary Projects. Title 23, United States Code, Section 112, requires as a condition precedent to approval by the FHWA of this Agreement that each bidder file a sworn statement executed by, or on behalf of, the person, firm, association, or corporation to whom this Agreement would be awarded, certifying that such person, firm, association, or corporation has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the submitted bid. A form to make the non-collusion affidavit statement required by Section 112 as a certification under penalty of perjury rather than as a sworn statement as permitted by 28 U.S.C., Sec. 1746 was included in the Proposal.

4.2. Convict Produced Materials

FHWA Federal-aid projects are subject to 23 CFR § 635.417, Convict produced materials. Materials produced after July 1, 1991 by convict labor may only be incorporated in a Federal aid highway construction project if such materials have been: (i) produced by convicts who are on parole, supervised release, or probation from a prison, or (ii) produced in a prison project in which convicts, during the 12 month period ending July 1, 1987, produced materials for use in Federal aid highway construction projects, and the cumulative annual production amount of such materials for use in Federal aid highway construction does not exceed the amount of such materials produced in such project for use in Federal aid highway construction during the 12 month period ending July 1, 1987. The O&M Contractor and each Subcontractor shall comply with such requirements and the O&M Contractor agrees to include this Section 4.2 in each Subcontract, without modification except as appropriate to identify the Subcontractor who will be subject to the provisions of such Subcontract.

4.3. Access to Records and Record Retention

As required by 2 CFR Parts 200 and 1201, and without limiting the O&M Contractor's obligations under Part 2, Section 19 of this Agreement, the O&M Contractor and its Subcontractors shall allow FHWA and the Comptroller General of the United States, or their duly authorized representatives, access to all books, documents, papers, and records of the O&M Contractor and such Subcontractors which are directly pertinent to any grantee, subgrantee or financing contract, for the purpose of making audit, examination, excerpts, and transcriptions thereof. In addition, as required by 2 CFR Parts 200 and 1201, the O&M Contractor and its Subcontractors shall retain all such books, documents, papers, and records for three years after final payment is made pursuant to any such contract and all other pending matters are closed (or, if applicable, for such longer period as is required pursuant to Part 2, Sections 19.1.6 and 19.1.7 of this Agreement). The O&M Contractor agrees to include this Section 4.3 in each Subcontract, without modification except as appropriate to identify the Subcontractor who will be subject to the provisions of such Subcontract.

5. SMALL BUSINESS PARTICIPATION AND WORKFORCE DEVELOPMENT

5.1. Required Plans

5.1.1. Intentionally Omitted

5.1.2. Operating Period: Prior to the commencement of each consecutive five Contract Year period during the Operating Period, the O&M Contractor shall submit, and obtain Approval from the Developer of, a plan for achieving the Routine O&M Work ESB Goal applicable to such period. The first such plan is required to be submitted and Approved prior to the Substantial Completion Date and shall apply to the Contract Year during which the Substantial Completion Date occurs and the immediately following four Contract Years. Requirements for these plans are contained in Appendix C to this Schedule 15.

5.2. Investigations

As it determines necessary, the Developer may conduct reviews or investigations of participants in the Project to ensure O&M Contractor's compliance with its obligations under this Schedule 15 with respect to DBEs, ESBs, OJT and local hiring, including: the O&M Contractor; all Subcontractors; DBE and ESB firms and applicants for DBE and/or ESB certification that are not themselves Subcontractors; all OJT and local hire participants; and complainants. The O&M Contractor is required to (and shall ensure its Subcontractors and each of their Subcontractors) cooperate fully and promptly with compliance reviews, certification reviews, investigations and other requests for information, in any such case, by the Developer in connection with O&M Contractor's compliance with this Section 5 and Section 6 of, and Appendices A, B and C to, Schedule 15.

5.3. Intimidation and retaliation

The O&M Contractor shall not (and shall ensure that its Subcontractors and each of their Subcontractors shall not) intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured by CDOT's DBE, ESB or OJT programs or the Project's local hiring program, each as implemented for this Project pursuant to this Schedule 15, or because the individual or firm has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under any such program.

5.4. Assurance of Non-Discrimination

By entering into this Agreement, the O&M Contractor agrees to the following assurance (which for purposes of O&M Contractor Default number (33) in Part 2, Section 32.1.1 of this Agreement shall constitute a material obligation) and shall include it in all Subcontracts without modification except as appropriate to identify the Subcontractor who will be subject to the provisions of such Subcontract:

The contractor, sub-recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to: (1) Withholding progress payments; (2) Assessing sanctions; (3) Liquidated damages; and/or (4) Disqualifying the contractor from future bidding as non-responsible.

5.5. OJT Program and Minimum Wages

The intent of the On-the-Job Training (OJT) program plan is to provide an innovative approach to train and upgrade females and minorities (as that term is defined in Section B.i.D. of Appendix F to this Schedule 15 in the journey worker status of the skilled crafts. Training opportunities may be provided with on-the-job trainees or duly registered apprentices.

The minimum wage rates for OJT program participants during the Operating Period shall be established by the Developer and notified to the O&M Contractor at least 60 Calendar Days prior to the commencement of each Contract Year during the Operating Period. The first such notification shall be made prior to the Substantial Completion Date and shall apply to the Contract Year during which the Substantial Completion Date occurs.

The O&M Contractor shall ensure that payment to all OJT program participants is not less than such minimum rates from time to time. In addition, trainees/apprentices working in the skilled crafts must be paid the Davis-Bacon wage decision full fringe benefit rate per hour for the classification of work required by the approved program in accordance with Appendix D to this Schedule 15.

6. SMALL BUSINESS AND WORKFORCE DEVELOPMENT GOALS

6.1. Summary of Goals

The following table summarizes the goals defined in greater detail in Sections 6.2 and 6.3 of, and Appendices A, B and C to, this Schedule 15 with respect to DBEs, ESBs, OJT and local hiring.

Collectively, the Operating Period Small Business Goals and the Workforce Development Goals (each as separately defined in Sections 6.2 and 6.3 of this Schedule 15) are referred to herein as the “Small Business and Workforce Goals”.

	Disadvantaged Business Enterprise	Emerging Small Business	On-the-Job-Training	Local Hiring
Operating Period				
Routine O&M Work	N/A	\$850,000 total (indexed) for each five Contract Year period	N/A	N/A

6.2. Small Business Goals

6.2.1. Intentionally Omitted

6.2.2. Operating Period Goals

- a. During the Operating Period the O&M Contractor shall make good faith efforts to achieve the Routine O&M Work ESB Goal applicable to each five Contract Year period (the “Operating Period Small Business Goals”) as set out below. Following consultation with the O&M Contractor, the Developer may lower any of these goals at any time if it reasonably believes, upon evaluation of the DBE and ESB markets, that such goal is unachievable.

Routine O&M Work ESB Goal

- b. As further outlined in Appendix C to this Schedule 15, commencing with the Contract Year during which the Substantial Completion Date occurs, the O&M Contractor shall make good faith efforts to achieve \$850,000 total (indexed) of ESB participation in the Routine O&M Work (the "Routine O&M Work ESB Goal") during each sequential five Contract Year period during the Operating Period, with the first such period being the Contract Year during which the Substantial Completion Date occurs and the immediately following four Contract Years (provided that, if applicable, the amount of such goal shall be prorated for the first such period to account for the Substantial Completion Date occurring part way through a Contract Year).
- c. The O&M Contractor and the Developer shall meet at agreed upon intervals, but no less than annually, to evaluate the O&M Contractor's progress toward achieving the then applicable Routine O&M Work ESB Goal (such meeting may be the annual progress review held pursuant to Section 6 of this Schedule 15).
- d. At the end of each five Contract Year period, the Developer will evaluate whether the O&M Contractor has achieved the Routine O&M Work ESB Goal and its efforts to achieve such goal, in order to determine whether a payment deduction shall be made pursuant to Section 1.3.2.a of this Schedule 15. Whether or not the O&M Contractor has achieved the goal, the O&M Contractor shall submit for review by the Developer documentation evidencing the good faith efforts that the O&M Contractor considers it has taken to achieve the goal.

Intentionally Omitted

6.3. Workforce Development Goals

6.3.1. Intentionally Omitted

6.3.2. Intentionally Omitted

6.4. Assignment of Financial Deductions and Incentives to Subcontractors

Subject to the mandatory payment and dispute resolution provisions in Part 2, Section 17.5 of this Agreement and Section 2.(b) of Part A of Schedule 16 (*Mandatory Terms*), the O&M Contractor may assign financial deductions and incentives associated with Small Business Goals to Subcontractors pursuant to the terms of the relevant Subcontractor's Subcontract, provided that the Developer Accepts the terms of such assignment and financial consequences prior to execution of the relevant Subcontract. Any O&M Contractor request for the Developer's Acceptance shall include the relevant Subcontract terms and a description of how the O&M Contractor will monitor and assist the relevant Subcontractor's efforts at achieving the desired small business participation in connection with such assignment. Any such proposed assignment must also be proportionate to the amount and type of work to be provided by the relevant Subcontractor. Notwithstanding any assignment of financial deductions and incentives associated with Small Business Goals being made, no such assignment shall relieve the O&M Contractor of its responsibility in meeting its Small Business Goals outlined in Section 6.2 of this Schedule 15.

7. COMMUNITY DEVELOPMENT PROGRAMS

7.1. Community Development Programs

In order to contribute to the community development needs of high need neighborhoods located along the Project area and otherwise create a positive relationship between local communities and the O&M Contractor, the O&M Contractor shall provide support as reasonably requested by the Developer in connection with the following activities:

- a. establish an organized program to assist businesses in taking advantage of the significant business opportunity provided by the local workforce during the Operating Period. This program shall include a commitment to work with restaurants, food vendors

and catering businesses that are located within such neighborhoods and are likely to be impacted by the construction work. This program may include the following elements:

- i. Business investment revolving loans and/or grant programs;
 - ii. Property access agreements for food carts and food trucks;
 - iii. Coupon programs;
 - iv. Advertisements; and/or
 - v. Partnerships with food-access non-profits;
- b. establish a college scholarship program that will benefit students enrolled during the Operating Period as students of good-standing at Swansea Elementary school. The scholarship program shall be designed for students who go on to successfully obtain a high school degree or equivalent, and who subsequently are accepted to and enroll in a two or four year associates or bachelors degree program;
 - c. in partnership with Swansea Elementary school, develop and/or fund a construction education curriculum for the school designed to impart math and engineering concepts relevant to the construction of the Project; and
 - d. establish any other programs that it considers appropriate for the purposes of achieving the community development objective referred to above in relation to such neighborhoods.

7.2. Annual Report

The O&M Contractor shall provide to the Developer supporting information in respect of the report to be submitted by the Developer pursuant to Section 7.2 of Schedule 15 (Federal and State Requirements) to the Project Agreement (in a form to be agreed between the Parties, both acting reasonably) prior to NTP2, with subsequent information to be submitted to the Developer no later than 30 Calendar Days (1) before the end of each Contract Year that ends during the Operating Period, (2) after the Substantial Completion Date and (3) before the end of each Contract Year that ends during the Operating Period during which any of such programs remain active and, in each case, prior to the annual progress review conducted in respect of the relevant Contract Year pursuant to Section 1.2.4 or 1.2.6, as applicable, of this Schedule 15. Each such report shall (to the extent known at the time of submission of such report) describe:

- a. each of the programs that has been, or will be, established by the Developer to comply with its obligations under Section 7.1 of Schedule 15 to the Project Agreement;
- b. the participation by the O&M Contractor and any equivalent targets that have been established in relation to each of the programs;
- c. progress towards achieving such targets, both on an aggregate and a Contract Year basis; and
- d. any other relevant information.

8. DELIVERABLES

At a minimum, the O&M Contractor shall submit the following to the Developer for Information, Acceptance, or Approval in accordance with the specified timeframes:

Table 1. Deliverables

Deliverable	Information, Acceptance, or Approval	Schedule
Annual EEO Report (FHWA Form PR 1391)	Acceptance	Annually by August 15 during the Operating Period.

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Deliverable	Information, Acceptance, or Approval	Schedule
Davis-Bacon monthly payroll reports	Acceptance	Monthly during the Operating Period.
Small Business Commitment for each DBE and ESB	Acceptance	Concurrently with the Annual Small Business Commitments or by 10th Working Day of each month, and no earlier than 90 Calendar Days prior to the firm commencing work.
Joint Venture Commitments	Acceptance	Concurrently with the Annual Small Business Commitments or by 10th Working Day of each month, and no earlier than 90 Calendar Days prior to the firm commencing work.
Small Business Commitment Modification	Acceptance	Prior to occurrence requiring termination or modification or, if that is not possible, within five Calendar Days of the occurrence.
Small and Disadvantaged Business monthly reports	Acceptance	No later than the tenth Working Day of each month during the Operating Period.
Uniform Report of DBE Awards or Commitments and Payments Form	Acceptance	Bi-annually by May 15 and November 15.
Annual small and disadvantaged business annual performance progress review report	Approval	No later than 30 Calendar Days before the end of each Contract Year during the Operating Period.
Five-Year Routine O&M Work ESB Participation Plan	Approval	Concurrently with the Maintenance Management Plan at the commencement of each new five Contract Year period commencing with the Contract Year in which Substantial Completion occurs.
Routine O&M Work ESB Five-Year Final Report	Approval	At the end of each sequential five Contract Year period within 30 Calendar Days after the end of the final Contract Year in such period.
Approval form for each proposed OJT apprentice and trainee	Approval	Approval must occur before training begins
Enrollment and Residency Disclosure for each proposed local worker	Acceptance	Acceptance must occur before individual's hours may count toward the goal.
OJT monthly reports	Acceptance	Monthly during the Operating Period.
Supporting information for the Community Development Program report	Acceptance	Prior to the issuance of NTP2, no later than 30 Calendar Days prior to the commencement of each Contract Year during the Operating Period and no later than 30 Calendar Days after Substantial Completion.
Requests to assign portions of the Small Business and Workforce Development Goals and associated deductions/incentives to Subcontractors	Acceptance	Prior to the execution of the applicable Subcontract.

9. APPENDICES

Appendix A Intentionally Omitted

Appendix B Intentionally Omitted

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Appendix C	Operating Period Goals Compliance and Plan Requirements
Appendix D	Davis-Bacon Wage Decisions
Appendix E	Executive Order No. 11246
Appendix F	CDOT's Special Standard Provision for "Affirmative Action Requirements Equal Employment Opportunity"
Appendix G	USDOT Standard Title VI/Non-Discrimination Assurances
Appendix H	FHWA Form 1273 (Revised May 1, 2012)

Appendix A
Intentionally Omitted

Appendix B
Intentionally Omitted

Appendix C
Operating Period Goals Compliance and Plan Requirements

Part I. Routine O&M Work ESB Goals and Requirements

1. Routine O&M Work ESB Goal: Pursuant to Section 6.2.2 of this Schedule 15, the O&M Contractor is required to make good faith efforts to achieve the Routine O&M Work ESB Goal applicable to each sequential five Contract Year period during the Operating Period. Good faith efforts means all necessary and reasonable steps to achieve the goal which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to achieve the goal, even if not successful. For additional guidance on how the Developer will determine whether or not it considers that the O&M Contractor has made good faith efforts, see 49 CFR Part 26 Appendix A.
2. Five-Year Routine O&M Work ESB Participation Plan: Commencing with the Contract Year in which Substantial Completion occurs, the O&M Contractor shall submit the following information for Approval at the same time as it submits its Maintenance Management Plan prior to the commencement of each new five Contract Year period:
 - a. An estimated schedule for achievement of the Routine O&M Work ESB Goal applicable to the relevant five Contract Year period. The O&M Contractor shall outline the expected participation toward achieving the goal. This outline shall set the framework for achieving the Routine O&M Work ESB Goal during such period.
 - b. A list of the areas of Work the O&M Contractor has identified for potential ESB participation and approximate dollar value of each area.
 - c. A description of how participation will be monitored and tracked and the internal procedures through which the O&M Contractor will ensure the goal is met. This will include distribution of goal responsibilities to Subcontractors, collecting data on Subcontractor participation and performance, and ensuring only valid performance is counted.
 - d. Methods for ensuring prompt payment to all Subcontractors (for certainty, not only ESB Subcontractors) performing O&M Work After Construction (other than Renewal Work) (for certainty, not just Routine O&M Work) during the Operating Period, including a description as to whether and how the O&M Contractor will implement any additional prompt payment requirements, beyond those mandated in Part 2, Section 17.5 of this Agreement, as well as the process by which the O&M Contractor will track and monitor the following: invoicing by Subcontractors; prompt payment to Subcontractors; and release of retainage. This portion of the plan shall include any efforts that the O&M Contractor and Subcontractors that are not themselves ESBs will make to assist with mobilization efforts and early purchase of materials, or any other payment measures that will aid the viability of small business participation in the work.
3. Commitments and Counting
 - a. Commitments. In order for the work performed by an ESB to count toward achieving the applicable Routine O&M Work ESB Goal, the O&M Contractor must have an Accepted Small Business Commitment for the Routine O&M Work to be performed. A "Small Business Commitment" is a portion of the Routine O&M Work, identified by dollar amount and Work area, designated by the O&M Contractor for participation by a particular ESB.
 - i. All proposed Small Business Commitments to ESB firms must be submitted to the Developer for Acceptance via a "Commitment Confirmation Form". The Commitment Confirmation Form must be Accepted by the Developer prior to the ESB commencing work in order for the participation to be counted toward the applicable Routine O&M Work ESB Goal. Once Accepted, Small Business Commitments are enforceable obligations of the O&M Contractor under this

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- Agreement. Each ESB firm must be certified for the work to be performed upon submission of the Small Business Commitment.
- ii. Commitment Confirmation Forms shall be submitted to the Developer for Acceptance no later than the 10th Working Day of each month during the O&M Term. The Commitment Confirmation Form must be submitted no earlier than 90 Calendar Days prior to the firm commencing work.
- b. Counting Eligible Participation. Unless otherwise specified in this Appendix C, eligible ESB participation will be counted in accordance with 49 CFR 26.55. ESB participation will be counted in the same manner as DBE participation with the exception that ESB firms do not have work codes and therefore are not limited to performance in certain work areas.
- i. If the O&M Contractor seeks to count participation by an ESB firm engaged in a joint venture, the O&M Contractor shall seek Acceptance from the Developer of the joint venture's eligible participation by submitting the joint venture agreement explaining the work and management arrangement between the joint venture.
 - ii. The O&M Contractor shall only count a reasonable fee for contract-specific services toward achieving the applicable Routine O&M Work ESB Goal. Non-contract specific expenses may not be counted. In the case of temporary employment placement agencies, only the placement fee and fees for a temporary employee that will be specifically and exclusively used for work on the Project shall count toward achieving the applicable Routine O&M Work ESB Goal; the temporary employee's hourly fee will not count.
 - iii. If an ESB is decertified from the ESB program after Acceptance of a Small Business Commitment and the execution of a Subcontract, the O&M Contractor may still count the ESB participation toward achieving the applicable Routine O&M Work ESB Goal.
- c. Commercially Useful Function ("CUF") Reviews. The Developer applies the DBE requirement from 49 CFR § 26.55 to all ESB firms. The O&M Contractor shall monitor all ESB firms to ensure those firms are performing a CUF. The Developer shall determine whether an ESB firm has performed a CUF on the Project. If the Developer determines that a firm is not performing a CUF pursuant to 49 CFR § 26.55, no work performed by such firm shall count toward achieving the Routine O&M Work ESB Goal.
- d. The use of joint checks to ESBs must be Approved by the Developer before they are used to make a payment. The O&M Contractor shall request Approval for the use of a joint check in a written letter signed by the ESB and the O&M Contractor, stating the reason for the joint checks and the approximate number of checks that will be needed.
- e. Small Business Commitment modifications. The O&M Contractor shall not terminate, reduce or otherwise modify the work to be performed under a Small Business Commitment without Acceptance from the Developer. If, due to exigent circumstances, it is not possible for the O&M Contractor to seek Acceptance prior to termination, reduction or modification, the O&M Contractor shall submit to the Developer a request for Acceptance within five Calendar Days of the occurrence requiring such action. Requests for Acceptance shall be made upon a form mutually agreed by the O&M Contractor and the Developer (both acting reasonably).
- i. Terminations and reductions include instances in which the O&M Contractor seeks to perform work originally designated for an ESB Subcontractor with its own forces, those of an Affiliate, a non-ESB firm or with another ESB firm.
 - ii. In order to receive Acceptance of a termination or reduction, the O&M Contractor shall, at a minimum, have good cause for the termination or reduction as outlined in 49 CFR § 26(f).

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- iii. Prior to requesting Acceptance of a termination or reduction, the O&M Contractor shall provide the firm written notice of the O&M Contractor's intent to terminate or reduce the commitment and the reason for such termination or reduction, with a copy to the Developer. In such notice of intent, the O&M Contractor shall provide the firm at least five Working Days to respond to the notice and to inform the Developer and the O&M Contractor of the reasons, if any, why it objects to the proposed termination or reduction and any reasons why it considers that it should not be Accepted. The O&M Contractor is not required to provide the five Working Days' written notice in cases where the ESB has provided written notice that it is withdrawing. The notice period may be reduced by the Developer in its discretion if required by public necessity. The O&M Contractor shall not request Acceptance until the period has passed or been waived.
- iv. Requests for other modifications, such as the addition of Work to be performed by the ESB, shall be made by submitting an updated Commitment Confirmation for Acceptance by the Developer.
- v. The O&M Contractor shall make good faith efforts to replace any ESB commitment that has been terminated or reduced with another ESB firm as outlined in 49 CFR § 26.53(g).

4. Reporting Requirements

- a. Monthly Reporting. In addition to the monthly reporting requirements contained in Section 13 of Schedule 11, the O&M Contractor shall, at the same time as complying with such requirements, submit a monthly report (in a form to be agreed between the Parties, both acting reasonably) to the Developer for Acceptance during the Operating Period, which shall include the following information:
 - i. Subcontractor Participation and Payment: total value of Routine O&M Work to date during the applicable five Contract Year period, a detailed breakdown of all Subcontractors (and, for certainty, this requirement shall apply to all Subcontractors and not just ESB Subcontractors) that have participated on the Project during the five Contract Year period to date. It shall include:
 - 1. firm name;
 - 2. whether the firm is an ESB and the Small Business Commitment amount to the ESB;
 - 3. Subcontract amount; area of work performed; total paid to date to the firm; most recent invoice date and amount; and most recent payment date and amount.
 - 4. Identification of all subcontracting parties and the higher and lower tiered contracts associated with the Subcontract.
 - ii. Outreach and Upcoming Opportunities: a description of work areas on the Project for which the O&M Contractor is seeking ESB Subcontractors. The description shall also include upcoming outreach and training events if applicable.
 - iii. Compliance Issues Report: details of any issues that the Developer should be aware of regarding ESB participation on the Project. This may include payment disputes, non-performance by ESBs, and significant scope of work changes, potential CUF concerns or other performance issues.

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- b. Annual Progress Review Report: In addition to the monthly report required to be submitted in the relevant month pursuant to Section 4.a. of Part I of this Appendix C, the O&M Contractor shall submit an annual report (in a form to be agreed between the Parties, both acting reasonably) to the Developer for Approval no later than 30 Calendar Days before the end of each Contract Year and prior to each annual progress review conducted in respect of such Contract Year pursuant to Section 1.2.6 of this Schedule 15, which report shall include the following information:
- i. Bidders List: The O&M Contractor shall list all firms that submitted a quote to participate on the Project. The list shall include a description of the work for which the bid was submitted, whether the firm is a DBE or ESB, and whether they were selected for the work.
 - ii. Participation Assessment: A summary and assessment of ESB participation of the past Contract Year and total to date progress made toward achieving the applicable ESB Routine O&M Work Goal.
 - iii. Summary of solicitation and good faith efforts to date.
 - iv. Anticipated ESB participation for the remainder of the current five Contract Year period.
 - v. If necessary, a request for amending the ESB Routine O&M Work Plan for the applicable period if the O&M Contractor believes it is not on target to meet the applicable goal or if the O&M Contractor has not met other commitments detailed in the plan. The request shall include a revised schedule for attaining the goal and a description of the O&M Contractor's approach to making up the participation.
- c. Developer Annual Assessment: Within 30 Calendar Days after each Annual Performance Progress Review conducted pursuant to Section 1.2.6 of this Schedule 15, the Developer shall provide a written determination on the O&M Contractor's progress toward achieving the Routine O&M Work ESB Goal for the applicable period. Progress will be based on the O&M Contractor's demonstrated good faith efforts, compliance with its five-year Routine O&M Work ESB Participation Plan, and meeting the schedules and milestones described in the plan.
- d. Five-Year Period Final Report: The O&M Contractor shall submit, for Approval by the Developer, its final report (in a form to be agreed between the Parties, both acting reasonably) on ESB participation at the end of each sequential five Contract Year period within 30 Calendar Days after the end of the final Contract Year in such period. The final report shall include a summary report of total participation toward achieving the Routine O&M Work ESB Goal for the applicable period. The report shall include the Small Business Commitment amount, the actual dollar amount paid to each ESB firm, the eligible participation amount, and area of work performed.
- e. Developer Five-Year Report: Following Approval of the O&M Contractor's five-year period final report, the Developer will evaluate the data to determine, and issue a written report setting out its determination of, whether the O&M Contractor has (i) achieved the Routine O&M Work ESB Goal for the applicable period and (ii) if the goal has not been met, demonstrated that it has made good faith efforts to achieve the goal.

Part II. Intentionally Omitted

Appendix D
Intentionally Omitted

Appendix E
Executive Order No. 11246

The following clauses from Executive Order No. 11246 shall be included in all Subcontracts without modification except as appropriate to identify the Subcontractor who will be subject to its provisions in place of "O&M Contractor":

1. O&M Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. O&M Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. O&M Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
2. O&M Contractor will, in all solicitations or advancements for employees placed by or on behalf of O&M Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
3. O&M Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with O&M Contractor's legal duty to furnish information.
4. O&M Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of O&M Contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
5. O&M Contractor will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
6. O&M Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
7. In the event of O&M Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and O&M Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

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8. O&M Contractor will include the provisions of Sections 1 to 8 of this Appendix E in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. O&M Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event O&M Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, O&M Contractor may request the United States to enter into such litigation to protect the interests of the United States."

Appendix F
CDOT's Special Standard Provision for
"Affirmative Action Requirements Equal Employment Opportunity"

A. AFFIRMATIVE ACTION REQUIREMENTS

Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246)

- i. The O&M Contractor acknowledges the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set out in this Appendix F.
- ii. The goals and timetables for minority and female participation, expressed in percentage terms for the O&M Contractor's aggregate workforce in each trade on all construction work in the covered area are as follows:

Goals and Timetable for Minority Utilization

TIMETABLE - UNTIL FURTHER NOTICE			
Economic Area	Standard Metropolitan Statistical Area (SMSA)	Counties Involved	Goal
157 (Denver)	2080 Denver-Boulder	Adams, Arapahoe, Boulder, Denver, Douglas, Gilpin, Jefferson.....	13.8%
GOALS AND TIMETABLES FOR FEMALE UTILIZATION			
Until Further Notice.....6.9% -- Statewide			

The O&M Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals established for the geographical area where the contract resulting from this solicitation is to be performed. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the O&M Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the O&M Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Par 60-4. Compliance with the goals will be measured against the total work hours performed.

- iii. The O&M Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 Working Days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor; employer identification number; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed.
- iv. As used in this specification, and in the contract resulting from this solicitation, the "covered area" is the county or counties shown on the Invitation for Bids and on the plans. In cases where the work is in two or more counties covered by differing percentage goals, the highest percentage will govern.

B. STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS

- i. Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246) As used in these Specifications:
 - A. "Covered area" means the geographical area described in the solicitation from which this contract resulted;
 - B. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
 - C. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Developer Form 941.
 - D. "Minority" includes;
 1. Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
 2. Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
 3. Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
 4. American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
- ii. Whenever the O&M Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.
- iii. If the O&M Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. The O&M Contractor must be able to demonstrate its participation in and compliance with the provisions of any such Hometown Plan. If the O&M Contractor is participating in an approved Plan it is required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other contractors toward a goal in an approved Plan does not excuse any covered contractor's failure to take good faith efforts to achieve the Plan goals and timetables.
- iv. The O&M Contractor shall implement the specific affirmative action standards provided in paragraphs vii A through P of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the O&M Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction contractors performing construction work in geographical areas where they do not have a Federal or Federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal

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Register in notice form, and such notices may be obtained from any office of Federal Contract Compliance Programs Office or from Federal procurement contracting officers. The O&M Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

- v. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the O&M Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the O&M Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.
- vi. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the O&M Contractor during the training period, and the O&M Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.
- vii. The O&M Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the O&M Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The O&M Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following;
 - A. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the O&M Contractor's employees are assigned to work. The O&M Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the O&M Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
 - B. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the O&M Contractor or its union have employment opportunities available, and maintain a record of the organization's responses.
 - C. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source of community organization and of what action was taken with respect to each individual. If such individual was sent to the union hiring hall for referral and was not referred back to the O&M Contractor by the union or, if referred, not employed by the O&M Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the O&M Contractor may have taken.
 - D. Provide immediate written notification to the Director when the union with which the O&M Contractor has a collective bargaining agreement has not referred to the O&M Contractor a minority person or woman sent by the O&M Contractor, or when he the O&M Contractor has other information that the union referral process has impeded the O&M Contractor's efforts to meet its obligations.
 - E. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the O&M Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The O&M Contractor shall provide notice of these programs to the sources compiled under paragraph vii.B of these specifications.

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- F. Disseminate the O&M Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the O&M Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc., by specific review of the policy with all management personnel and with all minority and female employees at least once a year, and by posting the O&M Contractor's EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
- G. Review, at least annually, the O&M Contractor's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foreman, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- H. Disseminate the O&M Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractors and Subcontractors with whom the O&M Contractor does or anticipates doing business.
- I. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the O&M Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the O&M Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
- J. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a the O&M Contractor's workforce.
- K. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
- L. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc. such opportunities.
- M. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the O&M Contractor's obligations under these specifications are being carried out.
- N. Ensure that all facilities and the O&M Contractor's activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
- O. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

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- P. Conduct a review, at least annually, of all supervisor's adherence to and performance under the O&M Contractor's EEO policies and affirmative action obligation.
- viii. Contractors (including the O&M Contractor) are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (paragraphs vii.A through P). The efforts of a contractor association, joint contractor-union contractor-community, or other similar group of which the O&M Contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under paragraphs vii.A through P of these specifications provided that the O&M Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the O&M Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goal and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the O&M Contractor. The obligation to comply, however, is the O&M Contractor's and failure of such a group to fulfil an obligation shall not be a defense for the O&M Contractor's noncompliance.
- ix. A single goal for minorities and a separate single goal for women have been established. The O&M Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the O&M Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the O&M Contractor has achieved its goals for women generally, the O&M Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).
- x. The O&M Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, sexual orientation, gender identity, national origin, or disability.
- xi. The O&M Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.
- xii. The O&M Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. If the O&M Contractor fails to carry out such sanctions and penalties it shall be in violation of these specifications and Executive Order 11246, as amended.
- xiii. The O&M Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph vii of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the O&M Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.
- xiv. The O&M Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form however,

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to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

- xv. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

C. SPECIFIC EQUAL EMPLOYMENT OPPORTUNITY RESPONSIBILITIES.

i. *General.*

A. Equal employment opportunity requirements not to discriminate and to take affirmative action to assure equal employment opportunity as required by Executive Order 11246 and Executive Order 11375 are set forth in Required Contract Provisions (Form FHWA 1273 or 1316, as appropriate) and these Special Provisions which are imposed pursuant to Section 140 of Title 23, U.S.C., as established by Section 22 of the Federal-Aid highway Act of 1968. The requirements set forth in these Special Provisions shall constitute the specific affirmative action requirements for project activities under this contract and supplement the equal employment opportunity requirements set forth in the Required Contract Provisions.

B. The O&M Contractor will work with the Developer and the Federal Government in carrying out equal employment opportunity obligations and in their review of his/her activities under the contract.

C. The O&M Contractor and all his/her Subcontractors holding subcontracts not including material suppliers, of \$10,000 or more, will comply with the following minimum specific requirement activities of equal employment opportunity: (The equal employment opportunity requirements of Executive Order 11246, as set forth in Volume 6, Chapter 4, Section 1, SubSection 1 of the Federal-Aid Highway Program Manual, are applicable to material suppliers as well as contractors and subcontractors.) The O&M Contractor will include these requirements in every subcontract of \$10,000 or more with such modification of language as is necessary to make them binding on the Subcontractor.

- ii. *Equal Employment Opportunity Policy.* The O&M Contractor will accept as its operating policy the following statement which is designed to further the provision of equal employment opportunity to all persons without regard to their race, color, religion, sex, sexual orientation, gender identity, national origin, or disability, and to promote the full realization of equal employment opportunity through a positive continuing program;

It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, national origin, or disability. Such action shall include; employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training.

- iii. *Equal Employment Opportunity Officer.* The O&M Contractor will designate and make known to the State highway agency contracting officers and equal employment opportunity officer (herein after referred to as the EEO Officer) who will have the responsibility for and must be capable of effectively administering and promoting an active contractor program of equal employment opportunity and who must be assigned adequate authority and responsibility to do so.

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iv. *Dissemination of Policy.*

- A. All members of the O&M Contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the O&M Contractor's equal employment opportunity policy and contractual responsibilities to provide equal employment opportunity in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum.
- B. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the O&M Contractor's equal employment opportunity policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer or other knowledgeable company official.
- C. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer or other knowledgeable company official, covering all major aspects of the O&M Contractor's equal employment opportunity obligations within thirty days following their reporting for duty with the O&M Contractor.
- D. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer or appropriate company official in the O&M Contractor's procedures for locating and hiring minority group employees.
 - 1. In order to make the O&M Contractor's equal employment opportunity policy known to all employees, prospective employees and potential sources of employees, i.e., schools, employment agencies, labor unions (where appropriate), college placement officers, etc., the O&M Contractor will take the following actions:
 - a. Notices and posters setting forth the O&M Contractor's equal employment opportunity policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.
 - b. The O&M Contractor's equal employment opportunity policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

v. *Recruitment.*

- A. When advertising for employees, the O&M Contractor will include in all advertisements for employees the notation; "An Equal Opportunity Employer." All such advertisements will be published in newspapers or other publications having a large circulation among minority groups in the area from which the project work force would normally be derived.
- B. The O&M Contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants, including, but not limited to, State employment agencies, schools, colleges and minority group organizations. To meet this requirement, The O&M Contractor will, through his EEO Officer, identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group applicants may be referred to The O&M Contractor for employment consideration.

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In the event the O&M Contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, he is expected to observe the provisions of that agreement to the extent that the system permits the O&M Contractor's compliance with equal employment opportunity contract provisions. (The U.S. Department of Labor has held that where implementation of such agreements has the effect of discriminating against minorities or women, or obligates The O&M Contractor to do the same, such implementation violates Executive Order 11246, as amended.)

- C. The O&M Contractor will encourage his present employees to refer minority group applicants for employment by posting appropriate notices or bulletins in areas accessible to all such employees. In addition, information and procedures with regard to referring minority group applicants will be discussed with employees.
- vi. *Personnel Actions.* Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, or disability. The following procedures shall be followed;
- A. The O&M Contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.
 - B. The O&M Contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.
 - C. The O&M Contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the O&M Contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.
 - D. The O&M Contractor will promptly investigate all complaints of alleged discrimination made to the O&M Contractor in connection with his obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the O&M Contractor will inform every complainant of all of his avenues of appeal.
- vii. *Training and Promotion.*
- A. The O&M Contractor will assist in locating, qualifying, and increasing the skills of minority group and women employees, and applicants for employment.
 - B. Consistent with the O&M Contractor's work force requirements and as permissible under Federal and State regulations, the O&M Contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training.
 - C. The O&M Contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.
 - D. The O&M Contractor will periodically review the training and promotion potential of minority group and women employees and will encourage eligible employees to apply for such training and promotion.

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- viii. *Unions.* If the O&M Contractor relies in whole or in part upon unions as a source of employees, the O&M Contractor will use his/her best efforts to obtain the cooperation of such unions to increase opportunities for minority groups and women with the unions, and to effect referrals by such unions of minority and female employees. Actions by the O&M Contractor either directly or through a contractor's association acting as agent will include the procedures set forth below:
- A. The O&M Contractor will use best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group employees and women so that they may qualify for higher paying employment.
 - B. The O&M Contractor will use best efforts to incorporate an equal employment opportunity clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, sexual orientation, gender identity, national origin, or disability.
 - C. The O&M Contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the O&M Contractor, the O&M Contractor shall so certify to the State highway Developer and shall set forth what efforts have been made to obtain such information.
 - D. In the event the union is unable to provide the O&M Contractor with a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, the O&M Contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, or disability; making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The U.S. Department of Labor has held that it shall be no excuse that the union with which the O&M Contractor has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) In the event the union referral practice prevents the O&M Contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such the O&M Contractor shall immediately notify the State highway agency.
- ix. *Subcontracting.*
- A. The O&M Contractor will use his best efforts to solicit bids from and to utilize minority group Subcontractors or Subcontractors with meaningful minority group and female representation among their employees. The O&M Contractor shall obtain lists of minority-owned construction firms from State highway agency personnel.
 - B. The O&M Contractor will use his best efforts to ensure Subcontractor compliance with their equal employment opportunity obligations.
- x. *Records and Reports.*
- A. The O&M Contractor will keep such records as are necessary to determine compliance with the O&M Contractor's equal employment opportunity obligations. The records kept by the O&M Contractor will be designed to indicate:
 - 1. The number of minority and nonminority group members and women employed in each work classification on the project.
 - 2. The Progress and efforts being made in cooperation with unions to increase employment opportunities for minorities and women (applicable

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only to contractors who rely in whole or in part on unions as a source of their work force).

3. The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees, and
 4. The progress and efforts being made in securing the services of minority group Subcontractors or Subcontractors with meaningful minority and female representation among their employees.
- B. All such records must be retained for a period of three years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the State highway agency and the Federal Highway Administration.

The O&M Contractor will submit an annual report to the State highway agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form PR 1391.

Appendix G

USDOT Order No. 1050.2A “USDOT Standard Title VI/Non-Discrimination Assurances”

Part I – All Contracts

During the performance of this Agreement, the O&M Contractor, for itself, its assignees, and successors in interest agrees as follows:

1. Compliance with Law: the O&M Contractor (hereinafter includes consultants) will comply with all Law relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Federal Highway Administration (as they may be amended from time to time, “Non-discrimination Law”) which are herein incorporated by reference and made a part of this Agreement.
2. Non-discrimination: the O&M Contractor will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The O&M Contractor will not participate directly or indirectly in the discrimination prohibited by Non-discrimination Law, including employment practices when the relevant contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: in all solicitations, either by competitive bidding, or negotiation made by the O&M Contractor for work to be performed under a Subcontract, including procurements of materials, or leases of equipment, each potential Subcontractor will be notified by the O&M Contractor of the O&M Contractor's obligations under this Agreement and Non-discrimination Law.
4. Information and Reports: the O&M Contractor will provide all information and reports required by Non-discrimination Law, and directives issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Developer or FHWA to be pertinent to ascertain compliance with Non-discrimination Law and any such directives. Where any information required of the O&M Contractor is in the exclusive possession of another who fails or refuses to furnish the information, the O&M Contractor will so certify to the Developer or FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.
5. Sanctions for Noncompliance: in the event of the O&M Contractor's noncompliance with the nondiscrimination provisions in this Agreement, the Developer will impose such contract sanctions as it or FHWA may determine to be appropriate, including, but not limited to: withholding payments to the O&M Contractor under this Agreement until the O&M Contractor complies; and/or cancelling, terminating, or suspending a contract, in whole or in part.
6. Incorporation of Provisions: the O&M Contractor will include the provisions of Sections 1 through 6 of this Part I in every Subcontract, including procurements of materials and leases of equipment, unless exempt by Non-discrimination Law and directives issued pursuant thereto. The O&M Contractor will take action with respect to any subcontract or procurement as the Developer or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance, provided that, if the O&M Contractor becomes involved in, or is threatened with, litigation by a Subcontractor because of such direction, the O&M Contractor may request the Developer to enter into any litigation to protect the interests of the Developer. In addition, the O&M Contractor may request the United States to enter into the litigation to protect the interests of the United States.

Part II – Clauses for Transfer of Real Property Acquired or Improved under the Activity, Facility, or Program

The O&M Contractor for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that, in the event facilities are constructed, maintained, or otherwise operated on the property subject to the Project License for a purpose for which a US DOT activity, facility, or program is extended

or for another purpose involving the provision of similar services or benefits, the licensee will maintain and operate such facilities and services in compliance with all requirements imposed by Non-discrimination Law such that no person on the grounds of race, color, or national origin will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

Part III – Clauses for Construction/Use/Access to Real Property Acquired under the Activity, Facility or Program

The licensee for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, and (3) the licensee will use the premises in compliance with all other requirements imposed by or pursuant to Non-discrimination Law.

Parts IV – Non-Discrimination Authorities

Without prejudice to the generality of any other nondiscrimination provisions in this Agreement, during the performance of this Agreement, the O&M Contractor, for itself, its assignees, and successors in interest agrees to comply with the following Non-discrimination Law (as any such Law is amended from time to time):

Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21;

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);

Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);

Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;

The Age Discrimination Act of 1975, (42 U.S.C. § 6101 et seq.), as amended, (prohibits discrimination on the basis of age);

Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);

The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);

Titles II and III of the Americans with Disabilities Act, (42 U.S.C. §§ 12131-12189), (prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities), as implemented by US DOT regulations at 49 C.F.R. parts 37 and 38;

The Federal Aviation Administration’s Non-discrimination statute, (49 U.S.C. § 47123), (prohibits discrimination on the basis of race, color, national origin, and sex);

Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations(ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations);

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Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of Limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);

Title IX of the Education Amendments of 1972, as amended, (20 U.S.C. 1681 et seq.), (prohibits discrimination because of sex in education programs or activities).

**Appendix H
Required Contract Provisions**

Federal-Aid Construction Contracts

- I. General
- II. Nondiscrimination
- III. Nonsegregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Compliance with Governmentwide Suspension and Debarment Requirements
- XI. Certification Regarding Use of Contract Funds for Lobbying

I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.
3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.
4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

II. NONDISCRIMINATION

The provisions of this Section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

1. **Equal Employment Opportunity:** Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:
 - a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.
 - b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."
2. **EEO Officer:** The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.
3. **Dissemination of Policy:** All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and

classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

- a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.
 - b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.
 - c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.
 - d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.
 - e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.
- 4. Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.
- a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.
 - b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.
 - c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.
- 5. Personnel Actions:** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:
- a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.
 - b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.
 - c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

- d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. Training and Promotion:

- a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.
- b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).
- c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.
- d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

- a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.
- b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.
- c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.
- d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

- 8. Reasonable Accommodation for Applicants / Employees with Disabilities:** The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established thereunder. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.
- 9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment:** The contractor shall not discriminate **on** the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.
 - a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.
 - b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.
- 10. Assurance Required by 49 CFR 26.13(b):**
 - a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.
 - b. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting agency deems appropriate.
- 11. Records and Reports:** The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.
 - a. The records kept by the contractor shall document the following:
 - (1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;
 - (2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and
 - (3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;
 - b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This Section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

1. Minimum wages

- a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.
- b. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.
 - (1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification

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and wage rate and fringe benefits therefore only when the following criteria have been met:

- i. The work to be performed by the classification requested is not performed by a classification in the wage determination; and
 - ii. The classification is utilized in the area by the construction industry; and
 - iii. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- (2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- (3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- (4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this Section 1.b., shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.
- c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

2. Withholding

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be

considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and basic records

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

- (1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Website at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this Section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency.
- (2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

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- i. That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;
 - ii. That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;
 - iii. That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
- (3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.a.(2) of this section.
- (4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under Section 1001 of title 18 and Section 231 of title 31 of the United States Code.
- b. The contractor or subcontractor shall make the records required under paragraph 3.a. of this Section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and trainees

- a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the

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ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.
 - d. Apprentices and Trainees (programs of the U.S. DOT).
Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.
5. **Compliance with Copeland Act requirements.** The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.
 6. **Subcontracts.** The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.
 7. **Contract termination: debarment.** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.
 8. **Compliance with Davis-Bacon and Related Act requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.
 9. **Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.
 10. **Certification of eligibility.**
 - a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
 - b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
 - c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

The following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

1. **Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such

work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.
3. **Withholding for unpaid wages and liquidated damages.** The FHWA or the contacting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.
4. **Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this Section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).
 - a. The term "perform work with its own organization" refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:
 - (1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
 - (2) the prime contractor remains responsible for the quality of the work of the leased employees;
 - (3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and

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Schedule 15 (Federal and State Requirements)

- (4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.
 - b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.
2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.
3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.
4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.
5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.
2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).
3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.
2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200.

1. Instructions for Certification – First Tier Participants:

- a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.
- b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the Developer or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.
- c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.
- d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).
- f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the Developer or agency entering into this transaction.
- g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the Developer or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

- h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.
- i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the Developer or agency may terminate this transaction for cause or default.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

- a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:
 - (1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal Developer or agency;
 - (2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - (3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and
 - (4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
- b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

* * * * *

2. Instructions for Certification – Lower Tier Participants:

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200)

- a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.
- b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the Developer, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
- c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.
- d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).
- e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the Developer or agency with which this transaction originated.
- f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.
- g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.
- h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause.

The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

- i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the Developer or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

* * * * *

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Participants:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal Developer or agency.
2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

* * * * *

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 (49 CFR 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:
 - a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
 - b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

**Schedule 16
Mandatory Terms**

Part A: Subcontracting Terms

1. Mandatory Terms for Subcontracts of Every Tier

Each Subcontract shall:

- (a) include an acknowledgement and agreement from the lower-tier Subcontractor:
 - (i) of and to all the terms of the Project Agreement to the extent expressly applicable to it as a Subcontractor;
 - (ii) that:
 - (A) the Colorado General Mechanics' Lien Statute, C.R.S. §§ 38-22-101, *et seq.*, is not available to such Subcontractor as a remedy for non-payment with respect to the Project and, as such, such Subcontractor shall not file or permit to be filed any mechanics' lien, materialmens' lien, or other lien against the Enterprises or CDOT, or the Project, in the records of the Clerk and Recorder of the City of Denver or in any other real property records;
 - (B) notwithstanding Section 1(a)(ii)(A) of this Part A of this Schedule 16, the Colorado Contractor's Bond and Lien on Funds Statute, C.R.S. §§ 38-26-101, *et seq.*, provides remedies to public authorities and subcontractors in the event of a non-payment of a subcontractor (which remedies are in the form of deductions by the public authority from payments to the contractor and liens by subcontractors against relevant payment bonds) and, therefore, pursuant to C.R.S. §§ 38-26-107 and, as contemplated by Section 5 of Schedule 5 (*Milestone Payments*) of the Project Agreement, if such Subcontractor has an unpaid claim under its Subcontract, such Subcontractor may file a verified statement of the amount due and unpaid with the Enterprises at any time up to and including, but not after, the Substantial Completion Date (following which filing the Enterprises shall be entitled to withhold funds from Developer pursuant to Section 5(a)(i) of Part 3 of Schedule 4 (*Payments*) of the Project Agreement as a result of such claim); and
 - (C) such Subcontractor shall execute and deliver any lien waiver as and when required to be executed by it pursuant to Sections 2.4(b)(ii) or 2.4(b)(iii) of Part 2 of Schedule 4 (*Payments*) of the Project Agreement or Sections 4(c)(ii) or 4(c)(iii) of Schedule 5 (*Milestone Payments*) of the Project Agreement; and
 - (iii) that:
 - (A) all notices, documentation and other information required to be delivered by Developer to the Enterprises or, as applicable, the Department pursuant to the Project Agreement shall be directly delivered by Developer and not by such Subcontractor acting, directly or indirectly, on Developer's behalf, except to the extent that the Enterprises Approve in advance the direct delivery of such type of notice by such Subcontractor to the Enterprises or, as applicable, the Department; and
 - (B) the Enterprises (and the Department) may, in their discretion, disregard any notice delivered by such Subcontractor contrary to Section 1(a)(iii)(A) of this Part A of this Schedule 16;

- (b) incorporate all terms and provisions:
 - (i) that the Project Agreement requires to be expressly incorporated in such Subcontract; and
 - (ii) as are otherwise necessary for Developer to comply with its obligations under the Project Agreement with respect to the compliance of Subcontractors with certain provisions of the Project Agreement, including:
 - (A) Sections 8.1.2, 8.3.1.a, 8.5, 8.6.1.a, 15.4.b, 17.5, 19.1, 20.1.2, 20.1.4, 20.1.5, 20.1.6, 25.2.7.b and 30.1.4.b of the Project Agreement; and
 - (B) Sections 2.1, 2.2, 2.3, 2.4, 2.5, 3, 4.2, 4.3, 5.2, 5.3, 5.4 and 6.4 of, and the Appendices to, Schedule 15 (Federal and State Requirements) of the Project Agreement;
- (c) require the lower-tier Subcontractor to:
 - (i) participate in meetings between Developer and Enterprises where requested in writing by either Developer or the Enterprises; and
 - (ii) cooperate with any reasonable requests for information or assistance provided to them through the Dispute Resolution Procedures, except to the extent that such cooperation would require such Subcontractor to assume any legal liability;
- (d) contain all provisions necessary to ensure Developer shall comply with its obligations under Section 34.2 of the Project Agreement as they relate to such Subcontract;
- (e) not otherwise contain terms that are contrary to or inconsistent with the Project Agreement; and
- (f) provide that any amendment or waiver of any such Subcontract's provisions that would result in a violation of this Part A of this Schedule 16 shall be null and void unless Approved by the Enterprises.

2. **Mandatory Terms for Subcontracts**

In addition to complying with Section 1 of Part A of this Schedule 16, subject to any exemptions that may be Approved by the Enterprises, each Subcontract shall:

- (a) not require from a Subcontractor the delivery to Developer or the higher-tier Subcontractor, as applicable, of any construction, payment or performance bond or letter of credit for an amount (in aggregate with all other such bonds and letters of credit) exceeding the aggregate value of the relevant Subcontract, provided that, if separate payment and performance bonds are required, each type of bond may separately be in an amount not to exceed such aggregate value;
- (b) specify an alternative dispute resolution mechanism ("ADR") of referral for binding arbitration (which may be preceded by voluntary mediation) for payment disputes that complies with the following requirements:
 - (i) save to the extent expressly required otherwise by this Section 2(b), the ADR shall be conducted in accordance with the American Arbitration Association's Construction Industry Arbitration Rules and Mediation Procedures in effect from time to time;
 - (ii) the arbitrator(s) shall be mutually agreed by the parties to Subcontract at the time of, or prior to, referral;
 - (iii) either party to the Subcontract may require referral to ADR provided that, if the recipient of the invoice has not required referral within 90 Calendar Days after delivery of the invoice not paid or partially paid, the recipient shall irrevocably waive its rights to dispute the relevant invoice. Delivery shall be deemed made when deposited in the U.S. mail postage prepaid or hand delivered;

Central 70 Project: Maintenance Contract
Schedule 16 (Mandatory Terms)

- (iv) the ADR shall provide for completion of the ADR process within 180 Calendar Days of delivery of the disputed invoice; and
- (v) the prevailing party shall be awarded its costs provided that the arbitrator has discretion to require an equal split of the costs if there is no clearly prevailing party; and
- (c) subject to Section 17.5.3 of the Project Agreement, provide that the relevant Subcontractor as payee submit monthly invoices in respect of any amount claimed as determined pursuant to Section 17.5.1.a through 17.5.1.d of the Project Agreement.

3. **Intentionally Omitted**

Part B: Intentionally Omitted

Schedule 17
Environmental Requirements

This Agreement contains a number of references to Schedule 17 (*Environmental Requirements*). The Developer and the O&M Contractor hereby acknowledge and agree that Schedule 17 (*Environmental Requirements*) to the Project Agreement is incorporated herein by reference, provided, however, that for the purposes of this Agreement, Schedule 17 (*Environmental Requirements*) to the Project Agreement shall be read, construed, and interpreted such that (1) references to the Developer therein shall be references to the O&M Contractor, (2) references to the Enterprises, the Department or CDOT therein shall be references to the Developer, the Enterprises, the Department or CDOT, as appropriate, and (3) the O&M Contractor shall observe, perform, comply with and assume as part of its obligations under this Agreement all of the Developer's obligations and liabilities under Schedule 17 (*Environmental Requirements*) to the Project Agreement to the extent such obligations and liabilities relate to the O&M Activities (as if the same were expressly referred to herein as obligations and liabilities of the O&M Contractor *mutatis mutandis*).

Schedule 18
Right-of-Way

This Agreement contains a number of references to Schedule 18 (*Right-of-Way*). The Developer and the O&M Contractor hereby acknowledge and agree that Schedule 18 (*Right-of-Way*) to the Project Agreement is incorporated herein by reference, provided, however, that for the purposes of this Agreement, Schedule 18 (*Right-of-Way*) to the Project Agreement shall be read, construed, and interpreted such that (1) references to the Developer therein shall be references to the O&M Contractor, (2) references to the Enterprises, the Department or CDOT therein shall be references to the Developer, the Enterprises, the Department or CDOT, as appropriate, and (3) the O&M Contractor shall observe, perform, comply with and assume as part of its obligations under this Agreement all of the Developer's obligations and liabilities under Schedule 18 (*Right-of-Way*) to the Project Agreement to the extent such obligations and liabilities relate to the O&M Activities (as if the same were expressly referred to herein as obligations and liabilities of the O&M Contractor *mutatis mutandis*).

Schedule 19
Intentionally Omitted

**Schedule 20
Forms of Contractor Bond**

Part A: Form of Payment and Performance Surety Bond

PAYMENT AND PERFORMANCE BOND NO.: []

SURETY:¹ [name], a [legal status]
[address]

PRINCIPAL: Roy Jorgensen Associates, Inc., a Delaware corporation
[address]

OBLIGEE[S]: Kiewit Meridiam Partners LLC, a Delaware limited liability company
160 Inverness Drive West, Suite 110
Englewood, Colorado 80112

**BOND
AMOUNT:** \$[]

DATE: [date]

APPLICABLE

AGREEMENT[S]: Kiewit Meridiam Partners LLC, a limited liability company formed under the laws of the State of Delaware ("Developer"), has entered into the Project Agreement for the Central 70 Project dated as of November 21, 2017 (as the same may be amended, modified or supplemented from time to time in accordance with its terms, the "Project Agreement") with Colorado High Performance Transportation Enterprise ("HPTE"), a government-owned business within, and a division of, the Colorado Department of Transportation ("CDOT"), and Colorado Bridge Enterprise ("BE"), a government-owned business within CDOT, (HPTE and BE, together, the "Enterprises") for the design, construction, financing, operation and maintenance of a portion of the I-70 East Corridor in Greater Denver (the "Project").

Principal has entered into the Maintenance Contract with Developer, dated as of [date] (as the same may be amended, modified or supplemented from time to time in accordance with its terms, the "Subcontract"), for [description of the work performed] in regards to the Project.

It is a requirement under Section 9.3.1.a.ii of the Project Agreement and under the terms of the Subcontract that this payment and performance bond (this "Bond") be delivered.

TERMS:

Section 1. The Subcontract is incorporated herein by reference. All terms that are not defined in this Bond shall have the meaning ascribed to them in the Subcontract.

Section 2. Principal and Surety, jointly and severally, bind themselves and their successors and assigns to the Obligee[s]:

(a) to pay for labor, laborers, materials, rental machinery, tools and equipment, and all other items that are described in C.R.S. §§ 38-26-101 through and

¹ The surety must be an Eligible Surety as defined under the O&M Contract.

including 38-26-110 (the "Contractor's Bonds Statute") furnished for use in the performance of the Subcontract; and

- (b) to perform the Subcontract.

Section 3. Surety's liability under this Bond shall not exceed:

- (a) the Bond Amount specified above; and
- (b) any costs or expenses payable under Section 8 below and any interest payable under the Contractor's Bonds Statute,

the aggregate amounts referred to in this Section 3(a) and (b) are referred to as the "Maximum Amount".

Section 4. No change, alteration, addition, omission, modification, supplement or extension of time to the Project Agreement or to the Subcontract, or to the nature of the work to be performed thereunder including, without limitation, any extension of time for performance or any change of any terms of or extension of time for any payment pertaining or relating to the Subcontract or to the Project Agreement, nor any fraud practiced by any other Person (other than any Obligee or any Additional Obligee), shall in any way affect the obligations of Surety under this Bond. Surety waives notice of any change, alteration, addition, omission, modification, supplement or extension of time.

Section 5. This Bond is intended for the benefit of all Persons named in the Contractor's Bond Statute including, without limitation, all direct and indirect Subcontractors of the Principal.

Section 6.

- (a) Whenever Principal and Surety are notified by the Obligee[s] that Principal is in default in the performance of the Subcontract (other than with respect to payment obligations), Surety shall as soon as reasonably practicable in light of then-prevailing circumstances ("promptly"):

- (i) remedy such default;
- (ii) arrange for Principal, with the prior written consent of the Obligee[s], to perform and complete the work in accordance with the Subcontract;
- (iii) itself, through its agents or through independent contractors, perform and complete the work in accordance with the Subcontract; or
- (iv) select a subcontractor or subcontractors to complete all applicable portions of the work for which a notice to proceed has been issued in accordance with the Subcontract and, using a procurement methodology provided by the Obligee[s], arrange for a contract between such subcontractor or subcontractors and the Obligee[s], and make available as work progresses (even if there is a default or a succession of defaults under such contract or contracts of completion arranged under this Section 6(a)(iv)) sufficient funds to pay the cost of completion, such funds not to exceed in aggregate, including, without limitation, other costs and damages for which Surety is liable hereunder, the Maximum Amount. Any new contract(s) entered into in fulfillment of this Section 6(a)(iv) may provide for a new bond for each new subcontractor, provided that the amount of any such bond (in aggregate with the amount of any other such bonds) will be the Maximum Amount under this Bond, less amounts paid under this Bond and less amounts paid under any successive bonds for substitute contractors authorized by the

Enterprises. Each new subcontractor shall be required to tender its bond to the Enterprises in accordance with Section 9.3.1 of the Project Agreement for such amount.

- (b) Whenever Principal and Surety are notified by the Oblige[e]s that Principal or any Subcontractor (of any tier) of Principal is in breach of its payment obligations under any Subcontract, which notice shall be given only for undisputed amounts, Surety shall promptly pay for the same in an amount not exceeding the Maximum Amount.

Section 7. Correspondence or claims relating to this Bond shall be sent to Surety at the address listed above for Surety. Surety shall promptly notify the Oblige[e]s of any claims relating to this Bond at the address[es] listed above for the Oblige[e]s.

Section 8. Surety agrees to indemnify, defend and hold the Oblige[e]s harmless from and against all loss, damage, cost, or expense incurred by the Oblige[e]s as a result of any claims made against or related to this Bond arising out of the bad faith actions of the Surety. If Surety is in breach of its obligations under this Bond, the Oblige[e]s shall be entitled to all remedies available at law or in equity. Should the Oblige[e]s commence litigation to enforce Surety's obligations under this Bond, Surety agrees that, in addition to paying its own costs and expenses of litigation, if it acted in bad faith or breached its obligations under this Bond, it shall also pay the Oblige[e]s's costs and expenses, including, without limitation, the Oblige[e]s's reasonable attorneys' fees (including those of the Colorado Attorney General's Office). Surety agrees that venue and jurisdiction for any litigation relating to this Bond shall be in the federal or state courts in the City and County of Denver, Colorado.

Section 9. This Bond has been furnished by Surety on behalf of Principal to comply with the Contractor's Bond Statute and any provision in this Bond conflicting with said statutory requirements shall be deemed deleted and provisions conforming to such statutory requirements shall be deemed incorporated herein. Principal and Surety acknowledge and agree that the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

Section 10. The Additional Oblige[e] Rider attached hereto is incorporated fully herein.

[remainder of page left intentionally blank; signature page follows]

Central 70 Project: Maintenance Contract
Schedule 20 (Forms of Contractor Bond)

IN WITNESS WHEREOF, Principal and Surety have caused this bond to be executed and delivered as of
[*date*].

[*To insert signature blocks.*]

ADDITIONAL OBLIGEE RIDER

ADDITIONAL OBLIGEE[S]:² [name], a [legal status]
[address]

DATE: [date]

RELATED BOND: This additional obligee rider is executed concurrently with and shall be attached to and form a part of the Payment and Performance Bond No. [] dated as of [date] (the “Bond”) by and among Roy Jorgensen Associates, Inc., a Delaware corporation, as Principal and [name] a [legal status] as Surety in the Bond Amount of \$[amount].

TERMS:

- Section 1.** All terms that are not defined herein shall have the meaning ascribed to them in the Bond.
- Section 2.** The undersigned agree and stipulate that the above named “Additional Obligees” shall be added to the Bond as named obligee[s], subject to the terms herein.
- Section 3.** The Additional Obligees shall have the right to notify Surety and Principal, as applicable, that Principal is in default under the Subcontract and/or that Principal or any Subcontractor (of any tier) of Principal is in breach of its payment obligations under any Subcontract, which notice with respect to any such breach of payment obligations shall be given only for undisputed amounts. Upon such notice by an Additional Obligee, Surety shall promptly act as if such notice was provided by the Obligees and shall act in accordance with Section 6 of the Bond. Surety shall promptly notify the Obligees of any claims by Additional Obligees relating to this Bond at the address listed in the Bond for the Obligees.
- Section 4.** The aggregate liability of Surety under this Bond, to any or all of the obligees, as their interests may appear, is limited to the Maximum Amount of said Bond.
- Section 5.** Additional Obligees’ rights hereunder are subject to the same defenses Principal and/or Surety have against the Obligees.
- Section 6.** Except as modified herein, the Bond shall be and remains in full force and effect.

[remainder of page left intentionally blank; signature page follows]

² The Additional Obligees will be (i) the Enterprises and (ii) the Collateral Agent.

Central 70 Project: Maintenance Contract
Schedule 20 (Forms of Contractor Bond)

IN WITNESS WHEREOF, Principal and Surety have caused this bond to be executed and delivered as of
[*date*].

[*To insert signature blocks.*]

Part B: Form of Payment Bond

PAYMENT BOND NO.: []

SURETY:³ [name], a [legal status]
[address]

PRINCIPAL: Roy Jorgensen Associates, Inc., a Delaware corporation
[address]

OBLIGEE[S]: Kiewit Meridiam Partners LLC, a Delaware limited liability company
160 Inverness Drive West, Suite 110
Englewood, Colorado 80112

BOND AMOUNT: \$[]

DATE: [date]

APPLICABLE

AGREEMENT[S]: Kiewit Meridiam Partners LLC, a limited liability company formed under the laws of the State of Delaware ("Developer"), has entered into the Project Agreement for the Central 70 Project dated as of November 21, 2017 (as the same may be amended, modified or supplemented from time to time in accordance with its terms, the "Project Agreement") with Colorado High Performance Transportation Enterprise ("HPTE"), a government-owned business within, and a division of, the Colorado Department of Transportation ("CDOT"), and Colorado Bridge Enterprise ("BE"), a government-owned business within CDOT, (HPTE and BE, together, the "Enterprises") for the design, construction, financing, operation and maintenance of a portion of the I-70 East Corridor in Greater Denver [(the "Project")].

Principal has entered into the Maintenance Contract with Developer, dated as of [date] (as the same may be amended, modified or supplemented from time to time in accordance with its terms, the "Subcontract"), for [description of the work performed] in regards to the Project.

It is a requirement under Section 9.3.1.a.ii of the Project Agreement and under the terms of the Subcontract that this payment bond (this "Bond") be delivered.

TERMS:

- Section 1.** The Subcontract is incorporated herein by reference. All terms that are not defined in this Bond shall have the meaning ascribed to them in the Subcontract.
- Section 2.** Principal and Surety, jointly and severally, bind themselves and their successors and assigns to the Obligee[s] to pay for labor, laborers, materials, rental machinery, tools and equipment, and all other items that are described in C.R.S. §§ 38-26-101 through and including 38-26-110 (the "Contractor's Bonds Statute") furnished for use in the performance of the Subcontract.
- Section 3.** Surety's liability under this Bond shall not exceed:
 - (a) the Bond Amount specified above; and

³ The surety must be an Eligible Surety as defined under the O&M Contract.

(b) any costs or expenses payable under Section 8 below and any interest payable under the Contractor's Bonds Statute,

the aggregate amounts referred to in this Section 3(a) and (b) are referred to as the "Maximum Amount".

- Section 4.** No change, alteration, addition, omission, modification, supplement or extension of time to the Project Agreement or to the Subcontract, or to the nature of the work to be performed thereunder including, without limitation, any extension of time for performance or any change of any terms of the Subcontract or to the Project Agreement, nor any fraud practiced by any other Person (other than any Obligee or any Additional Obligee), shall in any way affect the obligations of Surety under this Bond. Surety waives notice of any change, alteration, addition, omission, modification, supplement or extension of time.
- Section 5.** This Bond is intended for the benefit of all Persons named in the Contractor's Bond Statute including, without limitation, all direct and indirect Subcontractors of the Principal.
- Section 6.** Whenever Principal and Surety are notified by the Obligee[s] that Principal or any Subcontractor (of any tier) of Principal is in breach of its payment obligations under any Subcontract, which notice shall be given only for undisputed amounts, Surety shall promptly pay for the same in an amount not exceeding the Maximum Amount.
- Section 7.** Correspondence or claims relating to this Bond shall be sent to Surety at the address listed above for Surety. Surety shall promptly notify the Obligee[s] of any claims relating to this Bond at the address[es] listed above for the Obligee[s].
- Section 8.** Surety agrees to indemnify, defend and hold the Obligee[s] harmless from and against all loss, damage, cost, or expense incurred by the Obligee[s] as a result of any claims made against or related to this Bond arising out of the bad faith actions of the Surety. If Surety is in breach of its obligations under this Bond, the Obligee[s] shall be entitled to all remedies available at law or in equity. Should the Obligee[s] commence litigation to enforce Surety's obligations under this Bond, Surety agrees that, in addition to paying its own costs and expenses of litigation, if it acted in bad faith or breached its obligations under this Bond, it shall also pay all the Obligee['s][s'] costs and expenses, including, without limitation, the Obligee['s][s'] reasonable attorneys' fees (including those of the Colorado Attorney General's Office). Surety agrees that venue and jurisdiction for any litigation relating to this Bond shall be in the federal or state courts in the City and County of Denver, Colorado.
- Section 9.** This Bond has been furnished by Surety on behalf of Principal to comply with the Contractor's Bond Statute and any provision in this Bond conflicting with said statutory requirements shall be deemed deleted and provisions conforming to such statutory requirements shall be deemed incorporated herein. Principal and Surety acknowledge and agree that the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.
- Section 10.** The Additional Obligee Rider attached hereto is incorporated fully herein.

[remainder of page left intentionally blank; signature page follows]

Central 70 Project: Maintenance Contract
Schedule 20 (Forms of Contractor Bond)

IN WITNESS WHEREOF, Principal and Surety have caused this bond to be executed and delivered as of [date].

[To insert signature blocks.]

ADDITIONAL OBLIGEE RIDER

ADDITIONAL OBLIGEE[S]:⁴ [name], a [legal status]
[address]

DATE: [date]

RELATED BOND: This additional obligee rider is executed concurrently with and shall be attached to and form a part of the Payment Bond No. [] dated as of [date] (the “Bond”) by and among Roy Jorgensen Associates, Inc., a Delaware corporation, as Principal and [name] a [legal status] as Surety in the Bond Amount of \$[amount].

TERMS:

- Section 1.** All terms that are not defined herein shall have the meaning ascribed to them in the Bond.
- Section 2.** The undersigned agree and stipulate that the above named “Additional Obligees[s]” shall be added to the Bond as named obligee[s], subject to the terms herein.
- Section 3.** The Additional Obligees[s] shall have the right to notify Surety and Principal that Principal or any Subcontractor (of any tier) of Principal is in breach of its payment obligations under any Subcontract, which notice shall be given only for undisputed amounts. Upon such notice by an Additional Obligee, Surety shall promptly act as if such notice was provided by the Obligees[s] and shall act in accordance with Section 6 of the Bond. Surety shall promptly notify the Obligees[s] of any claims by Additional Obligees relating to this Bond at the address listed in the Bond for the Obligees[s].
- Section 4.** The aggregate liability of Surety under this Bond, to any or all of the obligees, as their interests may appear, is limited to the Maximum Amount of said Bond.
- Section 5.** Additional Obligees’ rights hereunder are subject to the same defenses Principal and/or Surety have against the Obligees[s].
- Section 6.** Except as modified herein, the Bond shall be and remains in full force and effect.

[remainder of page left intentionally blank; signature page follows]

⁴ The Additional Obligees will be (i) the Enterprises and (ii) the Collateral Agent.

Central 70 Project: Maintenance Contract
Schedule 20 (Forms of Contractor Bond)

IN WITNESS WHEREOF, Principal and Surety have caused this bond to be executed and delivered as of
[*date*].

[*To insert signature blocks.*]

Part C: Form of Performance Surety Bond

PERFORMANCE BOND NO.: []

SURETY:⁵ [name], a [legal status]
[address]

PRINCIPAL: Roy Jorgensen Associates, Inc., a Delaware corporation
[address]

OBLIGEE[S]: Kiewit Meridiam Partners LLC, a Delaware limited liability company
160 Inverness Drive West, Suite 110
Englewood, Colorado 80112

BOND AMOUNT: \$[]

DATE: [date]

APPLICABLE

AGREEMENT[S]: Kiewit Meridiam Partners LLC, a limited liability company formed under the laws of the State of Delaware ("Developer"), has entered into the Project Agreement for the Central 70 Project dated as of November 21, 2017 (as the same may be amended, modified or supplemented from time to time in accordance with its terms, the "Project Agreement") with Colorado High Performance Transportation Enterprise ("HPTE"), a government-owned business within, and a division of, the Colorado Department of Transportation ("CDOT"), and Colorado Bridge Enterprise ("BE"), a government-owned business within CDOT, (HPTE and BE, together, the "Enterprises") for the design, construction, financing, operation and maintenance of a portion of the I-70 East Corridor in Greater Denver [(the "Project")].

Principal has entered into the Maintenance Contract with Developer, dated as of [date] (as the same may be amended, modified or supplemented from time to time in accordance with its terms, the "Subcontract"), for [description of the work performed] in regards to the Project.

It is a requirement under Section 9.3.1.a.ii of the Project Agreement and under the terms of the Subcontract that this performance bond (this "Bond") be delivered.

TERMS:

- Section 1.** The Subcontract is incorporated herein by reference. All terms that are not defined in this Bond shall have the meaning ascribed to them in the Subcontract.
- Section 2.** Principal and Surety, jointly and severally, bind themselves and their successors and assigns to the Obligee[s] to perform the Subcontract.
- Section 3.** Surety's liability under this Bond shall not exceed:
 - (a) the Bond Amount specified above; and
 - (b) any costs or expenses payable under Section 8 below and any interest payable under the Contractor's Bonds Statute,

⁵ The surety must be an Eligible Surety as defined under the O&M Contract.

the aggregate amounts referred to in this Section 3(a) and (b) are referred to as the "Maximum Amount".

Section 4. No change, alteration, addition, omission, modification, supplement or extension of time to the Project Agreement or to the Subcontract, or to the nature of the work to be performed thereunder including, without limitation, any extension of time for performance or any change of any terms of or extension of time for any payment pertaining or relating to the Subcontract or to the Project Agreement, nor any fraud practiced by any other Person (other than any Obligee or any Additional Obligee), shall in any way affect the obligations of Surety under this Bond. Surety waives notice of any change, alteration, addition, omission, modification, supplement or extension of time.

Section 5. Whenever Principal and Surety are notified by the Obligee[s] that Principal is in default in the performance of the Subcontract (other than with respect to payment obligations), Surety shall as soon as reasonably practicable in light of then-prevailing circumstances ("promptly"):

- (a) remedy such default;
- (b) arrange for Principal, with the prior written consent of the Obligee[s], to perform and complete the work in accordance with the Subcontract;
- (c) itself, through its agents or through independent contractors, perform and complete the work in accordance with the Subcontract; or
- (d) select a subcontractor or subcontractors to complete all applicable portions of the work for which a notice to proceed has been issued in accordance with the Subcontract and, using a procurement methodology provided by the Obligee[s], arrange for a contract between such subcontractor or subcontractors and the Obligee[s], and make available as work progresses (even if there is a default or a succession of defaults under such contract or contracts of completion arranged under this Section 5(d)) sufficient funds to pay the cost of completion, such funds not to exceed in aggregate, including, without limitation, other costs and damages for which Surety is liable hereunder, the Maximum Amount. Any new contract(s) entered into in fulfillment of this Section 5(d) may provide for a new bond for each new subcontractor, provided that the amount of any such bond (in aggregate with the amount of any other such bonds) will be the Maximum Amount under this Bond, less amounts paid under this Bond and less amounts paid under any successive bonds for substitute contractors authorized by the Enterprises. Each new subcontractor shall be required to tender its bond to the Enterprises in accordance with Section 9.3.1 of the Project Agreement for such amount.

Section 6. Correspondence or claims relating to this Bond shall be sent to Surety at the address listed above for Surety. Surety shall promptly notify the Obligee[s] of any claims relating to this Bond at the address[es] listed above for the Obligee[s].

Section 7. Surety agrees to indemnify, defend and hold the Obligee[s] harmless from and against all loss, damage, cost, or expense incurred by the Obligee[s] as a result of any claims made against or related to this Bond arising out of the bad faith actions of the Surety. If Surety is in breach of its obligations under this Bond, the Obligee[s] shall be entitled to all remedies available at law or in equity. Should the Obligee[s] commence litigation to enforce Surety's obligations under this Bond, Surety agrees that, in addition to paying its own costs and expenses of litigation, if it acted in bad faith or breached its obligations under this Bond, it shall also pay all the Obligee['s][s'] costs and expenses, including, without limitation, the Obligee['s][s'] reasonable attorneys' fees (including those of the Colorado Attorney General's Office). Surety

agrees that venue and jurisdiction for any litigation relating to this Bond shall be in the federal or state courts in the City and County of Denver, Colorado.

Section 8. This Bond has been furnished by Surety on behalf of Principal to comply with the Contractor's Bond Statute and any provision in this Bond conflicting with said statutory requirements shall be deemed deleted and provisions conforming to such statutory requirements shall be deemed incorporated herein. Principal and Surety acknowledge and agree that the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

Section 9. The Additional Oblige Rider attached hereto is incorporated fully herein.

[remainder of page left intentionally blank; signature page follows]

Central 70 Project: Maintenance Contract
Schedule 20 (Forms of Contractor Bond)

IN WITNESS WHEREOF, Principal and Surety have caused this bond to be executed and delivered as of [date].

[To insert signature blocks.]

ADDITIONAL OBLIGEE RIDER

ADDITIONAL OBLIGEE[S]:⁶ [name], a [legal status]
[address]

DATE: [date]

RELATED BOND: This additional obligee rider is executed concurrently with and shall be attached to and form a part of the Performance Bond No. [] dated as of [date] (the "Bond") by and among Roy Jorgensen Associates, Inc., a Delaware corporation, as Principal and [name] a [legal status] as Surety in the Bond Amount of \$[amount].

TERMS:

- Section 1.** All terms that are not defined herein shall have the meaning ascribed to them in the Bond.
- Section 2.** The undersigned agree and stipulate that the above named "Additional Obligees" shall be added to the Bond as named obligee[s], subject to the terms herein.
- Section 3.** The Additional Obligees shall have the right to notify Surety and Principal that Principal is in default under the Subcontract. Upon such notice by an Additional Obligee, Surety shall promptly act as if such notice was provided by the Obligee[s] and shall act in accordance with Section 5 of the Bond. Surety shall promptly notify the Obligee[s] of any claims by Additional Obligees relating to this Bond at the address listed in the Bond for the Obligee[s].
- Section 4.** The aggregate liability of Surety under this Bond, to any or all of the obligees, as their interests may appear, is limited to the Maximum Amount of said Bond.
- Section 5.** Additional Obligees' rights hereunder are subject to the same defenses Principal and/or Surety have against the Obligee[s].
- Section 6.** Except as modified herein, the Bond shall be and remains in full force and effect.

[remainder of page left intentionally blank; signature page follows]

⁶ The Additional Obligees will be (i) the Enterprises and (ii) the Collateral Agent.

Central 70 Project: Maintenance Contract
Schedule 20 (Forms of Contractor Bond)

IN WITNESS WHEREOF, Principal and Surety have caused this bond to be executed and delivered as of
[*date*].

[*To insert signature blocks.*]

Schedule 21
Forms of Supervening Event Notices and Submissions

Instructions

Please generally see Part 2, Section 15 of the Maintenance Contract and the italicized and footnoted instructions in the forms that follow.¹ In addition:

- (1) The O&M Contractor shall submit:
 - (a) each Supervening Event Notice in the form of Part A to this Schedule 21; and
 - (b) each Supervening Event Submission in the form of Part B to this Schedule 21.
- (2) Each Supervening Event Notice and each Supervening Event Submission shall relate to an individual Supervening Event, although references can be made (as necessary) to other Supervening Events (e.g. to differentiate the effect of multiple events on the O&M Activities).
- (3) Bracketed items in Parts A and B to this Schedule 21 include instructions (*in italics*) and drafting alternatives (with multiple options separated by forward slashes “/”). The O&M Contractor shall modify or delete such bracketed items as the context and any additional instruction notes may require.
- (4) Each Supervening Event Notice and each Supervening Event Submission shall include a “SE Tracking Number” in the format of “X.Y” as follows:
 - (a) “X” shall be the sequential number of the Supervening Event for which a notice or submission (of any type) is submitted by the O&M Contractor; and
 - (b) “Y” shall be the number of the submission made with respect to a particular Supervening Event, where:
 - (i) “0” shall be reserved to refer to the initial Supervening Event Notice; and
 - (ii) each Supervening Event Submission, including any update or amendment to a previously made submission, shall be numbered in sequence “1”, “2”, “3” etc.
- (5) The O&M Contractor may attach supporting materials to any Supervening Event Notice or Supervening Event Submission, provided that the relevance and nature of such attachments are described in the main body of the submission.

¹ For certainty, the O&M Contractor shall delete this instruction box and any instructional footnotes in the relevant form prior to submission.

Part A: Form of Supervening Event Notice

[on O&M Contractor letterhead]

[date]

From: Roy Jorgensen Associates, Inc.
To: Developer Representative
Re: Central 70 Project: Supervening Event Notice
SE Tracking No: [].0

I am submitting this Supervening Event Notice on behalf of the O&M Contractor pursuant to Part 2, Section 15.1.2.a of the Maintenance Contract for the Central 70 Project (the "Agreement") dated as of November 21, 2017 [(as amended)]. For ease of reference, all capitalized terms used in this notice have the same meaning given to them in the Agreement.

Please be advised of the following:

1. Type of Supervening Event

This notice relates to [a / an]:²

- Force Majeure Event³ (as defined in paragraph [] of the definition of Force Majeure Event)
- Relief Event (as defined in paragraph [] of the definition of Relief Event)
- Compensation Event (as defined in paragraph [] of the definition of Compensation Event)
- Appendix B Parcel Unexpected Hazardous Substances Event (which is not a Compensation Event)

2. Occurrence and Duration

The [Force Majeure Event / Relief Event / Compensation Event / Appendix B Parcel Unexpected Hazardous Substances Event (which is not a Compensation Event)] occurred on [or about] [date]. This event [concluded on [or about] [date] / is continuing].⁴

3. Description

[Insert narrative description of Supervening Event].⁵

4. Mitigation

[Insert narrative description of steps taken, or expected to be taken, by the O&M Contractor to avoid and/or mitigate the effects of the Supervening Event.]

5. Next Steps

[Identify any proposed next steps, such as requests for calls, meetings etc., or otherwise indicate "None proposed at this time."]

By: _____
[insert name]
O&M Contractor's Representative

² References to the relevant paragraph within a definition should identify the specific relevant subparagraph.

³ For a "Force Majeure Event", check both "Force Majeure Event" and "Relief Event".

⁴ The O&M Contractor may modify this statement to account for particular circumstances. In addition, if a Supervening Event is anticipated in advance, replace this form of statement with the following (or the equivalent): "[O&M Contractor] has determined that a [Force Majeure Event / Delay Relief Event / Relief Event / Compensation Event / Appendix B Parcel Unexpected Hazardous Substances Event (which is not a Compensation Event)] is [likely imminent]. The O&M Contractor first made this determination on [or about] [date] based on [explanation]."

⁵ The narrative description should, to the extent reasonably possible and in addition to any other information that the O&M Contractor deems relevant, describe or identify: (a) the event; (b) such event's source/origin/cause; (c) affected location(s); and (d) such event's anticipated or actual effect on the O&M Activities.

Part B: Form of Supervening Event Submission

[on O&M Contractor letterhead]

[date]

From: Roy Jorgensen Associates, Inc.

To: Developer Representative

Re: Central 70 Project: [Preliminary / Detailed] Supervening Event Submission

SE Tracking No: [].[]

I am submitting this [Preliminary / Detailed] Supervening Event Submission on behalf of the O&M Contractor pursuant to Part 2, Section 15.1.2.b of the Maintenance Contract for the Central 70 Project (the "Agreement") dated as of November 21, 2017 [(as amended)]. For ease of reference, all capitalized terms used in this submission shall have the same meaning given to them in the Agreement.

Please be advised of the following⁶:

A. Background Information

1. Type of Supervening Event

This submission relates to [a / an]:⁷

- Force Majeure Event⁸ (as defined in paragraph [] of the definition of Force Majeure Event)
- Relief Event (as defined in paragraph [] of the definition of Relief Event)
- Compensation Event (as defined in paragraph [] of the definition of Compensation Event)
- Appendix B Parcel Unexpected Hazardous Substances Event (which is not a Compensation Event)

2. Occurrence and Duration

The [Force Majeure Event / Delay Relief Event / Relief Event / Compensation Event / Appendix B Parcel Unexpected Hazardous Substances Event (which is not a Compensation Event)] occurred on [or about] [date]. This event [concluded on [or about] [date] / is continuing].⁹

3. Description

[Insert narrative description of Supervening Event.]¹⁰

4. Mitigation

[Insert narrative description of steps taken, or expected to be taken, by O&M Contractor to avoid and/or mitigate the effects of the Supervening Event.]

⁶ In each Detailed Supervening Event Submission, and in any revised or amended Supervening Event Submission, the O&M Contractor shall include the following statement immediately under the relevant headings below and prior to any narrative text inserted by the O&M Contractor relating to the specific Supervening Event: "The following [has / has not] been amended since the prior related submission no. [X].[X]."

⁷ References to the relevant paragraph within a definition should identify the specific relevant subparagraph, if applicable.

⁸ For a "Force Majeure Event", check both "Force Majeure Event" and "Relief Event".

⁹ The O&M Contractor may modify this statement to account for particular circumstances.

¹⁰ The narrative description should, to the extent reasonably possible and in addition to any other information that the O&M Contractor deems relevant (and that is not required to be provided in a separate part of this form), describe or identify: (a) the event; (b) such event's source/origin/cause; and (c) affected location(s).

B. O&M Contractor's Request¹¹

5. Requested Resolution

[Insert summary description of relief, deadline extension and/or compensation sought with specific references to: (a) each relevant sub-Section within Part 2, Sections 15.3 and 15.7; and (b) the detailed supporting analysis below.]

6. Compliance Analysis

[Insert analysis of the Supervening Event's effect (if any) on O&M Contractor's performance of its obligations.]¹²

7. Intentionally Omitted

8. Change in Costs and Financing Costs

[Insert good faith estimate of compensable Change in Costs¹³, if any, together with the methodology for calculating such estimate in accordance with the terms of the Agreement.]¹⁴

C. Supporting Information

9. Documentation and Communications

[Insert description of (and, if appropriate, attach) all materially relevant available documentation and / or communications, if any, related to the Supervening Event, or otherwise indicate "None."]

10. Additional Information

[Insert any additional information the O&M Contractor believes is relevant to the Developer's consideration of the Supervening Event, and / or which the Developer has previously requested in connection with such event, or otherwise indicate "None."]

Under penalty of perjury, the undersigned certifies on behalf of the O&M Contractor that, to the best of O&M Contractor's knowledge (after due inquiry), the requests, claims, representations, statements, disclosures and information contained in this Supervening Event Submission are correct, complete (other than as expressly indicated herein) and not materially misleading.

By:

[insert name]

O&M Contractor's Representative

¹¹ Completion of B. is optional in a Preliminary Supervening Event Submission.

¹² Identify any actual or potential O&M Noncompliance Events and/or Closures that were, or are expected to be, directly attributable to the occurrence of such Supervening Event absent relief pursuant to Part 2, Section 15 of the Maintenance Contract.

¹³ Which, for certainty, may be calculated as applicable pursuant to paragraphs a., b. or c. of the definition thereof in Part A of Annex A (Definitions and Abbreviations) of the Maintenance Contract.

¹⁴ This should include: (a) information as to the type and amount of Available Insurance; (b) consideration of applicable deductions (pursuant to Part 2, Section 15.3.1.e of the Maintenance Contract) and compensation exclusions (pursuant to Part 2, Section 15.7 of the Maintenance Contract); and (c) reference to accompanying supporting documentation (which is required for a Detailed Supervening Event Submission and optional for a Preliminary Supervening Event Submission).

Schedule 22
Intentionally Omitted

Schedule 23
Intentionally Omitted

**Schedule 24
Change Procedure**

1. ENTERPRISE CHANGES, DEVELOPER CHANGES AND DIRECTIVE LETTERS

1.1. Delivery of and Response to Enterprise and Developer Change Notices

- a. The O&M Contractor acknowledges and accepts that
 - i. the Enterprises shall be entitled to (and, when required to do so pursuant to Section 8.6.2.b of the Project Agreement, shall) submit Enterprise Change Notices to Developer pursuant to Section 14.1.a of the Project Agreement; and
 - ii. the Developer has the right to propose changes to the O&M Activities pursuant to a Developer Change Notice in accordance with Part 2, Section 14.1.1.c of the Maintenance Contract.
- b. Any Enterprise Change Notice or Developer Change Notice:
 - i. shall:
 - A. set out the Enterprises' requirements for the relevant Enterprise Change or the Developer's requirements for the relevant Developer Change, as applicable, in reasonably sufficient detail to enable the O&M Contractor to prepare and timely submit an O&M Contractor's Change Response; and
 - B. include any specific directions or requirements as to the contents of the O&M Contractor's Change Response (which may be in addition to the content requirements specified in Sections 1.1.c.i.A through K of this Schedule 24, or to the effect that any such content requirement is not relevant to the proposed Enterprise Change or Developer Change, as applicable); and
 - ii. may, in the Enterprise's discretion (with respect to an Enterprise Change Notice) or the Developer's discretion (with respect to a Developer Change Notice), require the O&M Contractor to:
 - A. participate in a preliminary meeting regarding the proposed Enterprise Change or Developer Change, as applicable, at such time and location as the Enterprises or the Developer may reasonably request; and
 - B. at or before such preliminary meeting, deliver to the Developer (for delivery to the Enterprises) a written preliminary, non-binding order of magnitude cost estimate for the proposed Enterprise Change or Developer Change, as applicable, which shall be prepared by the O&M Contractor on a Reasonable Efforts basis and shall include each of the following elements (or a statement to the effect that such element is not relevant to the proposed Enterprise Change or Developer Change, as applicable,):
 - I. an introductory summary of the contents of such response;
 - II. a preliminary scope of work for such Enterprise Change or Developer Change, as applicable, together with:
 - a. a preliminary schedule for implementation of such scope of work; and
 - b. Intentionally Omitted;
 - III. a preliminary analysis of any extension of time and/or relief to which the O&M Contractor may be entitled pursuant to Part 2, Section 15 of the Maintenance Contract as a result of such

- Enterprise Change or Developer Change, as applicable, and otherwise that complies with the requirements for such an analysis set out in relation to paragraph B.7 of Part B of Schedule 21 (Forms of Supervening Event Notices and Submissions) of the effect (if any) of such Enterprise Change or Developer Change, as applicable, on achievement of any Key Milestone;
- IV. a preliminary estimate of any Change in Costs to which the O&M Contractor may be entitled pursuant to Part 2, Section 15 of the Maintenance Contract as a result of such Enterprise Change or Developer Change, as applicable; and
 - V. a preliminary identification and assessment of any other reasonably anticipated material impact on the O&M Activities of such Enterprise Change or Developer Change, as applicable.
- c. The Developer shall promptly upon receipt of an Enterprise Change Notice, provide a copy of such Enterprise Change Notice to the O&M Contractor. Promptly after, and in any event within 15 Working Days after, the later of the O&M Contractor's receipt of an Enterprise Change Notice or a Developer Change Notice, as applicable, and any preliminary meeting held pursuant to Section 1.1.b.ii.A of this Schedule 24 (or, if later, 5 Working Days prior to the date specified in any Enterprise Change Notice or by the date specified in any Developer Change Notice, as applicable, or such date as is otherwise agreed at any such meeting), the O&M Contractor shall submit to the Developer either:
- i. the O&M Contractor's written response to the Enterprise Change Notice or the Developer Change Notice, as applicable ("O&M Contractor's Change Response"), which response shall be signed by the O&M Contractor's Representative and include each of the following elements (or a statement to the effect that such element is not relevant to the proposed Enterprise Change):
 - A. an introductory summary of the contents of such response;
 - B. a detailed scope of work for such Enterprise Change or Developer Change, as applicable, together with:
 - I. a schedule for implementation of such scope of work; and
 - II. Intentionally Omitted;
 - C. the proposed method(s) for certification of completion of any aspects of the work required by such Enterprise Change or Developer Change, as applicable, where such methods shall, to the extent possible, follow procedures already set out in this Agreement;
 - D. any new Governmental Approvals, Permits or third-party consents, and/or any amendments to existing Governmental Approvals, Permits or third-party consents, required to implement such Enterprise Change or Developer Change, as applicable;
 - E. any amendments to the Maintenance Contract or the Project Agreement required to implement such Enterprise Change or Developer Change, as applicable;
 - F. an analysis of any extension of time and/or relief to which the O&M Contractor may be entitled pursuant to Part 2, Section 15 of the Maintenance Contract as a result of such Enterprise Change or Developer Change, as applicable, and otherwise that complies with the requirements for such an analysis set out in relation to paragraph B.7 of Part B of Schedule 21 (Forms of Supervening Event Notices and

- Submissions*) of the effect (if any) of such Enterprise Change or Developer Change, as applicable, on achievement of any Key Milestone;
- G. the estimated Change in Costs to which the O&M Contractor may be entitled, pursuant to Part 2, Section 15 of the Maintenance Contract, as a result of such Enterprise Change or Developer Change, as applicable, including a detailed breakdown of each element of the same (which detailed breakdown shall include all proposed contingencies with respect to estimated Change in Costs);
 - H. identification and analysis of any reasonably anticipated impact of such Enterprise Change or Developer Change, as applicable, on the Environmental Requirements, or an express confirmation that there will be no such impact, in each case as certified by the “Environmental Manager”, initially as identified in Schedule 27 (Key Personnel), subject to replacement pursuant to Part 2, Section 16.2 of the Maintenance Contract;
 - I. identification and analysis of any other reasonably anticipated impact on the O&M Activities of such Enterprise Change or Developer Change, as applicable;
 - J. such supporting information and documentation as the Enterprises may reasonably require in such Enterprise Change Notice or Developer Change Notice, as applicable; and
 - K. the following certification: “Under penalty of perjury, the undersigned certifies on behalf of the O&M Contractor that, to the best of the O&M Contractor’s knowledge (after due inquiry), as of the date hereof, the requests, claims, representations, statements, disclosures and information contained in this O&M Contractor’s Change Response are correct, complete (other than as expressly indicated herein) and not materially misleading.”; or
- ii. the O&M Contractor’s written rejection of the proposed Enterprise Change (or any part thereof) or Developer Change (or any part thereof) on the basis that it is a Restricted Change, including a supporting analysis.

1.2. Processing of Enterprise Change Notices and Developer Change Notices

- a. The Parties shall arrange to meet, at such time and location as the Enterprises or the Developer may reasonably request, to review and discuss O&M Contractor’s Change Response or the O&M Contractor’s written rejection submitted pursuant to Section 1.1.c of this Schedule 24.
- b. At any meeting arranged pursuant to Section 1.2.a of this Schedule 24, or otherwise upon written notice, the Developer may meet with the Enterprises and the Developer may request or require modifications to the O&M Contractor’s Change Response, including to require the O&M Contractor to solicit competitive bids for all or part of the work that would result from the proposed Enterprise Change or Developer Change, as applicable, provided that such modifications shall not result in a Restricted Change.
- c. The O&M Contractor shall promptly after, and in any event within 15 Working Days after, the O&M Contractor’s receipt of any notice from the Developer pursuant to Section 1.2.b of this Schedule 24, notify the Developer of any consequential changes to its prior O&M Contractor’s Change Response.
- d. With respect to
 - i. an O&M Contractor’s Change Response to an Enterprise Change Notice, promptly following receipt of a corresponding notice from the Enterprises

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Schedule 24 (Change Procedure)

pursuant to Section 1.2.d of Schedule 24 to the Project Agreement, the Developer shall:

- A. Accept the O&M Contractor's Change Response (as updated pursuant to Section 1.2.c of this Schedule 24);
 - B. without prejudice to the Enterprises' right to issue a Directive Letter pursuant to Section 1.4.a of Schedule 24 to the Project Agreement, request or require additional modifications (including modifications as to estimated Change in Costs (including any such modifications made to the methodology for calculating Change in Costs pursuant to Section 3 of Appendix A of this Schedule 24) to the O&M Contractor's Change Response (if applicable, as previously updated pursuant to Section 1.2.c of this Schedule 24), in which case the procedures set out in Sections 1.2.b and 1.2.c and this Section 1.2.d of this Schedule 24 shall be repeated; or
 - C. other than with respect to an Enterprise Change Notice that the Enterprises are required to issue pursuant to Section 8.6.2.b of the Project Agreement, withdraw the Enterprise Change Notice and thereafter, the O&M Contractor shall issue an Equivalent Claim Notice seeking from the Enterprises the reasonable and documented external professional costs and expenses (and for any equivalent internal costs and expenses, but only to the extent the O&M Contractor demonstrates to the Developer's reasonable satisfaction that such costs and expenses were incurred in lieu of and at a savings relative to external professional costs and expenses) incurred by it in preparing the O&M Contractor's Change Response pursuant to Section 1.1.c.i of this Schedule 24 (or any update thereto pursuant to Sections 1.2.c and 1.2.d.i of this Schedule 24) and Equivalent Project Relief and Pay-if-Paid Provisions shall apply; and
- ii. an O&M Contractor's Change Response to a Developer Change Notice, promptly, and in any event within 15 Working Days after the latest of:
- A. the Developer's receipt of the O&M Contractor's Change Response;
 - B. any meeting referenced in in Section 1.2.a of this Schedule 24; and
 - C. any O&M Contractor response to the Developer pursuant to Section 1.2.c of this Schedule 24,

the Developer shall:

- D. Accept the O&M Contractor's Change Response (as updated pursuant to Section 1.2.c of this Schedule 24);
- E. request or require additional modifications (including modifications as to estimated Change in Costs (including any such modifications made to the methodology for calculating Change in Costs pursuant to Section 3 of Appendix A of this Schedule 24) to the O&M Contractor's Change Response (if applicable, as previously updated pursuant to Section 1.2.c of this Schedule 24), in which case the procedures set out in Sections 1.2.b and 1.2.c and this Section 1.2.d of this Schedule 24 shall be repeated; or
- F. withdraw the Developer Change Notice and thereafter promptly reimburse the O&M Contractor for all reasonable and documented external professional costs and expenses (and for any equivalent internal costs and expenses, but only to the extent the O&M Contractor demonstrates to the Developer's reasonable satisfaction that such costs and expenses were incurred in lieu of and at a savings relative to

external professional costs and expenses) incurred by it in preparing the O&M Contractor's Change Response pursuant to Section 1.1.c.i of this Schedule 24 (or any update thereto pursuant to Sections 1.2.c and 1.2.d of this Schedule 24).

- e. With respect to any O&M Contractor's Change Response given in response to an Enterprise Change Notice or a Developer Change Notice requiring a corresponding Change under the Project Agreement, following the Developer's Acceptance of the O&M Contractor's Change Response and, with respect to a Developer Change, the Enterprises' Approval of the applicable Developer Change Notice pursuant to Section 2.2(d) of Schedule 24 (*Change Procedure*) to the Project Agreement, the Developer and the Enterprises shall promptly execute a written memorandum (a "PA Change Order") setting forth all details of the relevant Enterprise Change or Developer Change. The Developer shall promptly deliver a copy of each executed PA Change Order to the O&M Contractor.
- f. With respect to any O&M Contractor's Change Response given in response to a Developer Change Notice which does not require any Change under the Project Agreement, following the Developer's Acceptance of the Construction Contractor's Change Response, the Developer and the O&M Contractor shall promptly execute a written memorandum (an "O&M Change Order") setting forth all details of the relevant Developer Change. Developer shall promptly deliver a copy of each executed O&M Change Order to the O&M Contractor.
- g. An Enterprise Change or a Developer Change, as applicable, will only come into effect upon issue by the Developer to the O&M Contractor of a copy of a Change Order in respect of such Enterprise Change or Developer Change, as applicable. The O&M Contractor shall not proceed with an Enterprise Change or a Developer Change prior to receiving such Change Order. A Change Order issued in accordance with Section 1.2.e or Section 1.2.f of this Schedule 24 will be binding upon the O&M Contractor and the Developer. To the extent any Change Order includes any modification to the O&M Standards, the Project Schedule, or any other right or obligation of the Developer pursuant to the Project Agreement that has been delegated pursuant to this Agreement to the Maintenance Contract, a corresponding modification shall be deemed to have been made to the O&M Standards, the Project Schedule, or any other right or obligation of the O&M Contractor hereunder, respectively. Upon receipt of a copy of the Change Order from the Developer, the O&M Contractor will implement the Change in accordance with Section 1.3 of this Schedule 24.

1.3. Implementation of Enterprise Changes and Developer Changes

- a. The O&M Contractor shall begin to implement the relevant Enterprise Change or Developer Change, as applicable, on the commencement date set out in the relevant Change Order.
- b. Subject to the terms of the relevant Change Order, from the date on which a Change Order implementing an Enterprise Change or Developer Change, as applicable, is effective (or, with respect to an Enterprise Change initiated pursuant to Section 8.6.2 of the Project Agreement, such earlier date as is specified in the relevant Change Order):
 - i. the relevant Enterprise Change or Developer Change, as applicable, shall constitute a Compensation Event;
 - ii. the Change Order shall constitute an agreed memorandum for purposes of Part 2, Section 15.3.2 of the Maintenance Contract, for certainty without any obligation for the O&M Contractor to submit a Supervening Event Notice or Supervening Event Claim pursuant to Part 2, Section 15.1 of the Maintenance Contract;

- iii. the O&M Contractor shall be entitled to extensions of time, relief and/or compensation pursuant to Sections 15.3 through 15.4 of the Maintenance Contract, for certainty without Section 15.7 of the Maintenance Contract applying to the calculation of any such compensation, provided that the O&M Contractor's entitlement pursuant to this clause (iii) shall be subject to Equivalent Project Relief to the extent such entitlement arises in connection with an Enterprise Change; and
- iv. the Enterprises, the Developer and the O&M Contractor shall be entitled to share in any savings resulting from the implementation of the relevant Enterprise Change pursuant to Section 3 of this Schedule 24.

1.4. Enterprise Directive Letters

- a. The O&M Contractor acknowledges and accepts that:
 - i. pursuant to the Project Agreement, the Enterprises may at any time after the Enterprises' submission of an Enterprise Change Notice, and for so long as the Enterprises and the Developer have not reached a final agreement and executed a PA Change Order in relation thereto, deliver to Developer a notice (an "Enterprise Directive Letter") directing Developer to implement and perform the work as set out in such Enterprise Change Notice (as may be modified by such Enterprise Directive Letter). The Developer shall promptly provide to the O&M Contractor all Enterprise Directive Letters it receives from the Enterprises, and the O&M Contractor shall proceed promptly as directed in the Enterprise Directive Letter. Subject to the terms of any agreed Change Order that supersedes such Enterprise Directive Letter, the Developer's delivery of an Enterprise Directive Letter shall constitute a Compensation Event in respect of which the O&M Contractor shall be entitled to submit a Supervening Event Submission pursuant to Part 2, Section 15.1.2.b of the Maintenance Contract and all relevant provisions of Part 2, Section 15 of the Maintenance Contract shall apply (except that, for certainty, Part 2, Section 15.7 of the Maintenance Contract shall not apply to the calculation of any resulting compensation).
- b. Any Enterprise Directive Letter shall:
 - i. state that it is issued pursuant to Section 1.4.a of Schedule 24 to the Project Agreement;
 - ii. describe the work in question and any limits thereon to the extent not otherwise provided in the relevant Enterprise Change Notice; and
 - iii. specify the required commencement date of the relevant work together with any other implementation schedule and completion requirements.
- c. Promptly upon receipt of any Enterprise Directive Letter, O&M Contractor shall implement and perform the work in question as directed, provided that the O&M Contractor shall be entitled to give notice to the Developer (including a supporting analysis) if it refuses to perform any part of such work on the basis that it constitutes a Restricted Change.

1.5. Developer Directive Letters

- a. At any time after the Developer's submission of a Developer Change Notice, and for so long as the Parties have not reached a final agreement and executed a O&M Change Order in relation thereto, deliver to the O&M Contractor a notice (a "Developer Directive Letter") directing the O&M Contractor to implement and perform the work as set out in such Developer Change Notice (as may be modified by such Developer Directive Letter), and the O&M Contractor shall proceed promptly as directed in the Developer Directive Letter. Subject to the terms of any agreed Change Order that supersedes such Developer Directive Letter, the Developer's delivery of a Developer Directive Letter shall constitute a Compensation Event in respect of which the O&M Contractor shall be

entitled to submit a Supervening Event Submission pursuant to Part 2, Section 15.1.2.b of the Maintenance Contract and all relevant provisions of Part 2, Section 15 of the Maintenance Contract shall apply (except that, for certainty, Part 2, Section 15.7 of the Maintenance Contract shall not apply to the calculation of any resulting compensation).

- b. Any Enterprise Directive Letter shall:
 - i. state that it is issued pursuant to Section 1.5.a of Schedule 24 to the Maintenance Contract;
 - ii. describe the work in question and any limits thereon to the extent not otherwise provided in the relevant Developer Change Notice; and
 - iii. specify the required commencement date of the relevant work together with any other implementation schedule and completion requirements.
- c. Promptly upon receipt of any Developer Directive Letter, the O&M Contractor shall implement and perform the work in question as directed, provided that the Construction Contractor shall be entitled to give notice to the Developer (including a supporting analysis) if it refuses to perform any part of such work on the basis that it constitutes a Restricted Change.

2. O&M CONTRACTOR CHANGES

2.1. Delivery of O&M Contractor Change Notices

- a. The O&M Contractor shall be entitled to submit O&M Contractor Change Notices to the Developer for Approval pursuant to Part 2, Section 14.1.2 of the Maintenance Contract.
- b. Any O&M Contractor Change Notice shall be signed by the O&M Contractor's Representative and include each of the following elements (or a statement to the effect that such element is not relevant to the proposed O&M Contractor Change):
 - i. an introductory summary of the contents of such notice;
 - ii. a statement as to the O&M Contractor's reasons for proposing the O&M Contractor Change, including as to whether such O&M Contractor Change is being proposed by the O&M Contractor as an alternative to a Nonconforming Work Remedy (a "Nonconforming Work Change");
 - iii. reasonably sufficient detail regarding the proposed O&M Contractor Change to enable the Developer to evaluate the O&M Contractor's proposal in full, including:
 - A. other than with respect to a Nonconforming Work Change:
 - I. a detailed scope of work for such proposed O&M Contractor Change, together with:
 - a. a schedule for implementation of such scope of work; and
 - b. Intentionally Omitted; and
 - II. the proposed method(s) for certification of completion of any aspects of the work required by such O&M Contractor Change, where such methods shall, to the extent possible, follow procedures already set out in this Agreement;
 - B. any new Governmental Approvals, Permits or third-party consents, and any amendments to existing Governmental Approvals, Permits or third-party consents, required to implement such O&M Contractor Change;
 - C. any amendments to this Agreement and the Project Agreement required to implement such O&M Contractor Change;

- D. identification and analysis of any reasonably anticipated impact of such O&M Contractor Change on the Environmental Requirements, or express confirmation that there will be no such impact, in each case as certified by the Environmental Manager; and
- E. identification and analysis of any other reasonably anticipated impact on the O&M Work After Construction of such O&M Contractor Change;
- iv. the estimated Change in Costs (which, for certainty, may be positive (other than with respect to any Nonconforming Work Change) or negative) that may result from such O&M Contractor Change, including a detailed breakdown of each element of the same (which detailed breakdown shall include all proposed contingencies with respect to estimated Change in Costs), provided that, with respect to any Nonconforming Work Change, the O&M Contractor shall, to the extent such methodology is applicable to the relevant Nonconforming Work Change, calculate relevant elements of the estimated Change in Costs (including the resulting reduction in the value of the Work performed) by reference to the methodology set out in the provisions of the CDOT Standard Specifications relating to price adjustments relating to Nonconforming Work;
- v. the O&M Contractor's proposed methods of financing or funding any such positive Change in Costs and/or details regarding proposed payments by or to the Enterprises under the Project Agreement or by or to the Developer under this Agreement if any, being requested or proposed by the O&M Contractor (including as a result of the application of Section 3 of this Schedule 24), provided that no payments may be proposed to be made by the Developer to the O&M Contractor in connection with any Nonconforming Work Change;
- vi. any dates by which a response by the Developer to such notice is critical;
- vii. such supporting information and documentation as the Developer may reasonably require; and
- viii. the following certification: "Under penalty of perjury, the undersigned certifies on behalf of the O&M Contractor that, to the best of the O&M Contractor's knowledge (after due inquiry), as of the date hereof, the requests, claims, representations, statements, disclosures and information contained in this O&M Contractor Change Notice are correct, complete (other than as expressly indicated herein) and not materially misleading."

2.2. Processing of O&M Contractor Change Notices

- a. Any O&M Contractor Change Notice shall be subject to the Developer's Approval, provided that the Developer agrees to evaluate any O&M Contractor Change Notice in good faith, taking into account all issues that are relevant to the Developer, including whether, with respect to the proposed O&M Contractor Change:
 - i. a change in any payments under this Agreement or the Project Agreement has been proposed by the O&M Contractor;
 - ii. such O&M Contractor Change would or may affect the quality of the O&M Work After Construction or the likelihood of successful or timely delivery of the O&M Work After Construction;
 - iii. such O&M Contractor Change would or may interfere with the relationship of the Developer with the Enterprises and/or CDOT or any other third parties (including any Governmental Authority);
 - iv. the financial strength of the O&M Contractor is sufficient to perform the O&M Work After Construction (as modified by such O&M Contractor Change);

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- v. the value of the O&M Work After Construction and/or the residual value of the Project would or may be affected, including as a result of a Nonconforming Work Change; and
 - vi. such O&M Contractor Change would or may materially affect the risk, costs or liabilities to which the Developer will or may be exposed.
- b. As part of the Developer's evaluation of an O&M Contractor Change Notice, the Parties shall, at the Developer's discretion, arrange to meet at such time and location as the Developer may reasonably request to review and discuss the proposed O&M Contractor Change.
- c. Following the Developer's Approval of any O&M Contractor Change Notice (including with such conditions or modifications (including modifications as to estimated Change in Costs) as may be required by the terms of such Approval), the Developer shall promptly submit the same to the Enterprises as a Developer Change Notice (as defined in the Project Agreement). Notwithstanding any potential cost savings associated with an O&M Contractor Change Notice, the O&M Contractor acknowledges and accepts that:
- i. the Developer shall be entitled to reject any O&M Contractor Change Notice which, in the Developer's reasonable judgment, would materially and adversely affect the risk allocation and payment regime under the Project Agreement;
 - ii. to the extent that the Developer agrees to submit an O&M Contractor Change Notice to the Enterprises (as a Developer Change Notice (as defined in the Project Agreement) under Section 14.1.b of the Project Agreement), the Enterprises are under no obligation to accept a Developer Change Notice submitted by the Developer on behalf of the O&M Contractor and may, in their sole discretion, accept or reject such Developer Change Notice; and
 - iii. if the Enterprises accepts the corresponding Developer Change Notice, Enterprises and the Developer shall promptly execute a written Change Order pursuant to Section 2.2.d of Schedule 24 to the Project Agreement, and the Developer shall promptly deliver a copy of each executed Change Order to the O&M Contractor.
- d. The O&M Contractor shall begin to implement the relevant O&M Contractor Change on the commencement date set out in the agreed Change Order (or such other date as may be agreed by the Parties).
- e. Subject to the terms of the relevant Change Order, from the date on which a Change Order implementing an O&M Contractor Change is effective:
- i. the O&M Contractor shall be, and shall only be, entitled to such extensions of time, relief and/or compensation in connection with such O&M Contractor Change as may be set out in the relevant Change Order;
 - ii. the Enterprises shall be entitled to:
 - A. share, pursuant to Section 3 of this Schedule 24, in any savings resulting from the implementation of the relevant O&M Contractor Change; and
 - B. reimbursement by Developer for any external fees and expenses incurred by the Enterprises and/or CDOT in connection with reviewing and Approval of the Developer Change Notice corresponding to such O&M Contractor Change Notice and associated Change Order; and
 - C. the Developer shall be entitled to reimbursement by the O&M Contractor for any fees and expenses incurred by the Developer in connection with reviewing and Approval of the O&M Contractor Change Notice and associated Change Order, including such amounts as the Developer is

required to reimburse the Enterprises pursuant to Section 2.2.e.ii.B of Schedule 24 to the Project Agreement..

3. Cost Savings

3.1. The O&M Contractor acknowledges and accepts that pursuant to Section 3 of Schedule 24 to the Project Agreement, if, in connection with any Change documented in a Change Order or a Directive Letter:

- a. Developer's Change in Costs reflects a net saving to Developer; and/or
- b. with respect to any Nonconforming Work Change, the value of the Work performed, or of the Project, has been reduced,

then, subject to the terms of any relevant Change Order and, with respect to a Directive Letter, any written memorandum executed pursuant to Section 15.3.2 of the Project Agreement:

- c. with respect to any Enterprise Change (whether documented in a Change Order or a Directive Letter) or any Nonconforming Work Change, the Enterprises shall be entitled to 100% of such net saving and/or such reduction in value; and
- d. with respect to any Developer Change or O&M Contractor Change (other than any Nonconforming Work Change), the Enterprises shall be entitled to 50% of any such net saving and, as between the Developer and the O&M Contractor, the Developer shall be entitled to 50% of any such net savings unless otherwise agreed by the Parties.

3.2. The O&M Contractor acknowledges and accepts that the Enterprises shall be entitled, at their discretion, to elect to receive their share of any saving and/or reduction in value pursuant to Section 3.1 of Schedule 24 to the Project Agreement:

- a. as a lump sum payment (or series of payments) from Developer within 30 Calendar Days after;
 - i. such saving (or a portion thereof) is realized; or
 - ii. with respect to any reduction in value as a result of a Nonconforming Work Change, the date of the relevant Change Order;
- b. by way of an adjustment to the Performance Payment ; or
- c. by way of set-off against amounts otherwise payable by them to Developer,

as determined by the Enterprises in their sole discretion. The Developer shall provide to the O&M Contractor the Enterprises' demand for payment of any cost savings pursuant to Section 3 of Schedule 24 of the Project Agreement promptly upon receipt from the Enterprises, which shall include the method and timing of payment required by the Enterprises. The Developer and the O&M Contractor shall meet and discuss the method and timing of the payment required by the Enterprises in respect of such costs savings. The Developer shall use reasonable efforts to negotiate with the Enterprises the method and timing for payment of the costs savings which it has agreed with the O&M Contractor. To the extent that the Developer is unable to agree with the Enterprises a method and timing for payment as agreed with the O&M Contractor, or the O&M Contractor does not agree with the assessment by the Enterprises of the cost savings, the O&M Contractor shall provide such details to the Developer and the Developer shall initiate an Equivalent Claim. To the extent that the payment of any such cost savings requires a refund of any portion of the Contract Price, then O&M Contractor shall be responsible for paying to the Developer the amount of such cost savings as soon as practicable upon receipt of a copy of such demand, and in any event prior to the date such payment is due from the Developer to the Enterprises under the Project Agreement. If the O&M Contractor does not make any such payment when due, it shall thereafter bear interest in accordance with Part 1, Section 12.9, until the amount due from the O&M Contractor is paid.

Appendix A Change in Cost Calculation Methodology

1. Calculating Change in Cost

Subject to:

- a. the exceptions set out in the definitions of Change in Costs, Excess Costs and Excess Groundwater Costs in Part A of Annex A (Definitions and Abbreviations) to the Project Agreement; and
- b. Section 3 of this Appendix A to this Schedule 24,

the methodology set out in Section 2 of this Appendix A to this Schedule 24 shall be used for calculating Change in Costs, Excess Costs and Excess Groundwater Costs in accordance with the definitions thereof.

2. Calculation Methodology

2.1. Labor Costs

- a. General

The cost of labor shall be separately calculated with respect to construction labor and non-construction labor (such categories to be applied without reference to whether the relevant work is performed during the Construction Period or the Operating Period) pursuant to Sections 2.1.b and 2.1.c of this Appendix A to this Schedule 24. The cost of labor shall in all cases be calculated based on straight time for all hours worked, unless the Developer Approves overtime in advance. The use of a labor classification that would increase the resulting Change in Cost shall not be permitted without the Developer's Approval.

- b. Construction labor

The cost of construction labor shall equal the sum of the following in respect of each relevant worker:

- i. actual wages (i.e. the base wage paid to the worker exclusive of any non-cash fringe benefits) for every hour that the relevant worker is actually engaged in the relevant work, as documented by certified payrolls; *plus*
- ii. actual costs paid to, or on behalf of, such worker by reason of subsistence and travel allowances, health and welfare benefits, pension fund benefits, or other benefits, but only when such amounts are required to be paid by a collective bargaining agreement; *plus*
- iii. a labor surcharge of 67% of the wages referred to in Section 2.1.b.i of this Appendix A to this Schedule 24, which shall constitute full compensation for all state and Federal payroll, unemployment and other Taxes, insurance, non-cash fringe benefits (including health insurance, retirement plans, vacation, sick leave, and bonuses) and overhead to the extent not included in the costs falling within Section 2.1.b.ii of this Appendix A to this Schedule 24.

- c. Non-construction labor

The cost of non-construction labor shall equal the sum of the following in respect of each relevant worker:

- i. actual wages (i.e. the base wage paid to the worker exclusive of any non-cash fringe benefits) paid for every hour that the relevant worker is actually engaged in the relevant work as documented by a method agreed by the Developer and the O&M Contractor (or, absent agreement, determined by the Developer (acting reasonably)); *plus*

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- ii. a labor surcharge of 140% of the wages referred to in Section 2.1.c.i of this Appendix A to this Schedule 24, which shall constitute full compensation for all state and Federal payroll, unemployment and other Taxes, insurance, non-cash fringe benefits (including health insurance, retirement plans, vacation, sick leave, and bonuses) and overhead.
- d. Design labor
The cost of design labor shall equal the sum of the following in respect of each relevant worker:
 - i. actual wages (i.e. the base wage paid to the worker exclusive of any non-cash fringe benefits) paid for every hour that the relevant worker is actually engaged in the relevant work, as documented by a method agreed by the Developer and the O&M Contractor (or, absent agreement, by the Developer (acting reasonably)); *plus*
 - ii. a labor surcharge of 140% of the wages referred to in Section 2.1.d.i of this Appendix A to this Schedule 24, which shall constitute full compensation for all state and Federal payroll, unemployment and other Taxes, insurance, non-cash fringe benefits (including health insurance, retirement plans, vacation, sick leave, and bonuses) and overhead; *plus*
 - iii. an allocation for profit of 10% applied to the aggregate of actual wages (calculated pursuant to Section 2.1.d.i of this Appendix A to this Schedule 24) plus labor surcharge (calculated pursuant to Section 2.1.d.ii of this Appendix A to this Schedule 24).

2.2. Materials Costs

- a. General
 - i. Material costs shall be the actual cost (supported by valid quotes and invoices from Suppliers) of all materials to be used in the performance of the relevant work including normal wastage allowance as determined by reference to Good Industry Practice, subject to the requirements set out in this Section 2.2 of this Appendix A to this Schedule 24. The cost may include applicable local (within the State) sales and use taxes (but not State Sales Tax or any other Taxes), freight and delivery charges and any allowable discounts (exclusive of machinery rentals).
 - ii. The resulting price allowed for materials as determined pursuant to Section 2.2.a.i of this Appendix A to this Schedule 24 shall be subject to adjustment pursuant to Sections 2.2.b and 2.2.c of this Appendix A to this Schedule 24.
- b. Affiliated Source of Supply
If materials are obtained from a supply or source owned in whole or in part by the O&M Contractor or any other O&M Contractor-Related Entity:
 - i. the cost of such materials shall not exceed the lowest of (A) the lowest price charged by the O&M Contractor or any such O&M Contractor-Related Entity, as applicable, for similar materials furnished to other projects, (B) the lowest price charged by the O&M Contractor or any such O&M Contractor-Related Entity, as applicable, for similar materials otherwise furnished to the Project and (C) the current available wholesale price for such materials; and
 - ii. to the extent such materials were not specifically purchased for the relevant work, the O&M Contractor shall furnish an affidavit from itself, or from such other O&M Contractor-Related Entity that owns the supply or source of such materials, in either case certifying that such materials were taken from the O&M Contractor

or such other O&M Contractor-Related Entity's stock, that the quantity claimed was actually used, and that the price and transportation costs claimed represent actual costs to the O&M Contractor.

c. Excessive and Undocumented Materials Cost

If:

- i. the cost of materials as otherwise determined pursuant to Section 2.2.a of this Appendix A to this Schedule 24 is, in the Developer's reasonable opinion, excessive relative to what the Developer consider to be the lowest current available wholesale price, in the quantities needed and delivered to the Site; or
- ii. the O&M Contractor does not furnish to the Developer reasonably satisfactory evidence of the actual cost of materials from the Supplier thereof within 60 Calendar Days after the date of delivery of the materials,

for the purposes of calculating the Change in Costs, the cost of such materials shall be deemed to be the lowest current wholesale price, as determined by the Developer (acting reasonably), at which such materials are available, in the quantities needed and delivered to the Site.

2.3. **Equipment**

a. Blue Book

The cost of the use of equipment owned or rented by the O&M Contractor or any Subcontractor for use in the relevant work shall be equal to the lesser of (x) the actual cost charged for use of such equipment and (y) an amount calculated, pursuant to this Section 2.3 of this Appendix A to this Schedule 24, at an hourly rate derived from the most recent Rental Rate Blue Book of Rental Rates for Construction Equipment (the "Blue Book") (or any equivalent successor publication as reasonably determined by the Developer), which is in effect at the time of commencement of the relevant work resulting in a Change in Costs. The total hourly rates (comprised of the Operating Rate and the Standby Rate, as calculated in accordance with Section 2.3.b of this Appendix A to this Schedule 24) derived from the Blue Book:

- i. shall be computed from equipment costs currently in effect;
- ii. shall not include costs for operating personnel; and
- iii. shall be adjusted by each applicable "Regional Factor" and "Depreciation Factor" found in the front of each chapter in the Blue Book.

Notwithstanding the foregoing, in no circumstances shall the equipment costs for pickup trucks used solely for transportation of people and small tools (as described in Section 2.3.e of this Appendix A) be considered eligible for inclusion as a Change in Costs.

b. Rate Categories

Subject to Section 2.3.a of this Appendix A to this Schedule 24, equipment use rates shall be comprised of the following two categories (in each case where "BBMR" equals the relevant Blue Book monthly rate adjusted for year of manufacture):

- i. Operating Rate: This rate applies to those hours equipment is actually in use, includes ownership and operating costs, and shall equal:
 $((BBMR / 176) \text{ times } 1.06) + \text{Estimated Hourly Operating Costs from the Blue Book}$
- ii. Standby Rate: This rate applies to equipment required to be at the Site but not operating, includes ownership costs only, and shall equal

$((BBMR / 176) \text{ times } 1.06) \times 0.5$

The duration of allowable standby time is subject to Acceptance by the Enterprises with a maximum of eight hours per day or 40 hours in a normal week.

When the "manufacturer's rated capacity" falls between those shown in the Blue Book, the closest rated capacity will be used, without interpolation, for purposes of determining the BBMR.

c. Specialized Equipment

- i. In cases where the equipment to be used is specialized in nature, is not available in the O&M Contractor's or any other O&M Contractor-Related Entity's inventory and is rented or leased from an outside agency, a 10% allowance will be added on the first \$5,000 (indexed with respect to any such cost incurred in connection with a Compensation Event or an O&M Contractor Change that occurs during the Operating Period) *plus* 5% of the balance in excess of such first amount for overhead for all rented or leased equipment paid for by invoices.
- ii. Where the rate charged for equipment that is specialized in nature by such outside agency exceeds the rate determined by the Blue Book, the rental or lease agreement shall be subject to the Developer's Acceptance.
- iii. The operating costs from the Blue Book shall be paid for rented or leased equipment that is specialized in nature for each hour the equipment was actually used.

d. Rented Equipment

- i. In those cases where the required equipment is in the O&M Contractor's or any other O&M Contractor-Related Entity's available inventory but not on the Site, the equipment may be rented from a local source.
- ii. The Developer may Accept rental rates for such equipment obtained from local sources when such rates are within 10% of rates in the Blue Book.
- iii. When such equipment use is of short duration (i.e., less than a calendar week) "move-in" and "move-out" costs for equipment owned by the O&M Contractor or any other O&M Contractor-Related Entity may be considered when comparing rental costs of equipment obtained from local sources. This option will only be allowed when the cost of locally rented equipment would be less than using owned equipment, including such "move-in" and "move-out" charges, and supported by a cost analysis indicating the method used was the least expensive.
- iv. Should equipment be rented even though it is of a type that is in the O&M Contractor's or any other O&M Contractor-Related Entity's inventory and the rental costs exceed that allowed by this provision, the O&M Contractor will be reimbursed for such equipment based on the rates in the Blue Book.

e. Small Tools

The rates paid pursuant to this Section 2.3 of Appendix A to this Schedule 24 shall be deemed in all cases to include compensation for the cost of fuel, oil, lubricants, supplies, small tools, necessary attachments, repairs and maintenance of all kinds, depreciation, storage, insurance and all incidentals. Individual pieces of equipment or tools not listed in the Blue Book and having an individual replacement value of \$1,000 (indexed with respect to any such cost incurred in connection with a Compensation Event or a O&M Contractor Change that occurs during the Operating Period) or less, whether or not consumed by use, shall be considered to be "small tools". Equipment rental rates for such pieces of equipment or tools not listed in the Blue Book must be Accepted by the Developer before the relevant work is begun.

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f. Equipment Operators

Costs in respect of equipment operators shall be calculated pursuant to Section 2.1 of this Appendix A to this Schedule 24.

g. Classification of Equipment

Unless otherwise specified, manufacturer's ratings and manufacturer-approved modifications shall be used to classify equipment for the determination of applicable rental rates.

h. Computation of Time

The time to be paid for use of equipment on the Site shall be the time the equipment is in operation on the relevant portion of the work being performed in connection with the calculation of Change in Costs. The time shall include the reasonable time required to move the equipment to the location of the relevant work and return it to the original location or to another location requiring no more time than that required to return it to its original location. Moving time will not be paid for if the equipment is also used at the Site other than in connection with the event for which Change in Costs are calculated. Loading and transporting costs will be allowed, in lieu of moving time, when the equipment is moved by means other than its own power. No payment for loading and transporting will be made if the equipment is also used at the Site other than in connection with the event for which Change in Costs are calculated. Time will be computed in half and full hours. In computing the time for use of equipment, less than 30 minutes shall be considered one-half hour.

2.4. Governmental Approval and Permit Fees

Developer shall be entitled to reimbursement for the cost of any additional Governmental Approval and Permit fees payable as the result of the Change in Costs.

2.5. Other Direct Costs

For certainty, the O&M Contractor shall be reimbursed for any direct costs not otherwise included in Sections 2.1 through 2.4 of this Appendix A to this Schedule 24 to the extent such direct costs are included in paragraphs a.iv. and a.v. of the definition of Change in Costs in Part A of Annex A (*Definitions and Abbreviations*) to the Project Agreement.

2.6. Mark-Ups

a. Mark-Ups Generally

In addition to any element of any Change in Costs as otherwise calculated pursuant to this Appendix A to Schedule 24, pursuant to Section 2.6.c of this Appendix A to this Schedule 24 the following mark-ups ("Permitted Mark-Ups") shall apply:

- i. 15% for labor costs calculated in accordance with Section 2.1.b of this Appendix A to this Schedule 24;
- ii. 10% for labor costs calculated in accordance with Section 2.1.c of this Appendix A to this Schedule 24;
- iii. 15% for material costs calculated in accordance with Section 2.2 of this Appendix A to this Schedule 24 (provided that no mark-up shall be permitted on any materials or equipment furnished by the Enterprises);
- iv. 10% for equipment use costs calculated in accordance with Section 2.3 of this Appendix A to this Schedule 24;
- v. 5% for Governmental Approval and Permit fees calculated in accordance with Section 2.4 of this Appendix A to this Schedule 24;

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- vi. 5% for other direct costs calculated in accordance with Section 2.5 of this Appendix A to this Schedule 24; and
 - vii. 5% for the O&M Contractor's subcontracting of the relevant work as calculated in accordance with Section 2.6.c.ii of this Appendix A to this Schedule 24.
- b. Items Included in Mark-Ups
- i. Permitted Mark-Ups are full and complete compensation for:
 - A. all overhead;
 - B. small tools (as described in Section 2.3.e of this Appendix A to this Schedule 24);
 - C. consumables (items which are consumed in the performance of the work which are not a part of the finished product); and
 - D. other indirect costs of the relevant work,in each case, including (x) profit and (y) any and all costs and expenses incurred due to any delay in connection with the relevant work (to the extent not expressly included in paragraphs a.vii. and a.viii. of the definition of Change in Costs in Part A of Annex A (Definitions and Abbreviations) to the Project Agreement or as Delay Financing Costs or Milestone Payment Delay Costs).
 - ii. Permitted Mark-Ups shall be considered to include:
 - A. bond premiums;
 - B. incidental job burdens;
 - C. bonuses not otherwise covered;
 - D. field, jobsite and general home office expenses of all types (e.g. timekeepers, bookkeepers and other general office help);
 - E. supervisory expenses of all types (excluding only direct supervision of force account work); and
 - F. all other overhead, general condition and indirect costs and expenses,provided that, with respect to non-construction work related labor costs (as determined pursuant to Section 2.1.c of this Appendix A to this Schedule 24), overhead is included as part of the labor surcharge calculated pursuant to Section 2.1.c of this Appendix A to this Schedule 24, and includes accessories such as computer-assisted drafting and design (CADD) systems, computers, facsimile transmission machines, scanners, paper, etc.
- c. Payment of Mark-Ups
- i. With respect to any relevant work that the O&M Contractor self-performs, the Permitted Mark-Ups shall apply to any Change in Costs incurred by the O&M Contractor itself and not by any Subcontractor (excluding, for certainty, the mark-up referred to in Section 2.6.a.vii of this Appendix A to this Schedule 24).
 - ii. With respect to any relevant work that the O&M Contractor subcontracts, the Permitted Mark-Ups shall apply to any Change in Costs incurred by the Subcontractor that performs the relevant work (excluding, for certainty, the mark-up referred to in Section 2.6.a.vii of this Appendix A to this Schedule 24, which shall apply to Developer).

2.7. Savings

When in connection with any Change documented in a Change Order or a Directive Letter, the resulting Change in Costs involves results in a net aggregate saving to the O&M Contractor or a

net aggregate reduction in value of the work performed or of the Project (or any individual element of the calculation of the Change in Costs, whatever the net aggregate result, involves such a saving or such a reduction in value), Change in Costs shall be calculated to take into account all the O&M Contractor's (and, without double-counting, each relevant Subcontractor's) (a) otherwise increased profits and (b) avoided or avoidable overhead.

3. Unit Price Change Orders

- a. The Developer may, in its discretion, in connection with an Enterprise Change Notice, require the O&M Contractor to calculate Change in Costs (other than such costs as are described in paragraph a.viii. of the definition of Change in Costs in Part A of Annex A (Definitions and Abbreviations) to the Project Agreement) both by reference to the methodology set out in Section 2 of this Appendix A to this Schedule 24 and on an alternative "unit price" basis, on which basis the "unit price":
 - i. shall be the sum of:
 - A. a "base unit price", which shall be deemed to include (and be limited to) all O&M Contractor and Subcontractor costs for labor, material, overhead, and profit; *plus*
 - B. a "risk mark-up", which shall be deemed to include all O&M Contractor and Subcontractor contingencies (provided that such risk adjustment shall not exceed 5% of the "base unit price"); and
 - ii. shall not be subject to subsequent adjustment regardless of any change in the estimated quantities.
- b. Subject to the specific directions or requirements set out in the relevant Enterprise Change Notice, the O&M Contractor shall use both methodologies to calculate Change in Costs in any preliminary cost estimate delivered pursuant to Section 1.1.b.ii.B of this Appendix A to this Schedule 24 and in the O&M Contractor's Change Response.
- c. The Developer and the O&M Contractor may thereafter agree to calculate Change in Costs in any resulting Change Order on a unit price basis, with measurement of unit-priced quantities to be as specified in the Change Order. Absent agreement as to the method of calculation, the Developer may in its discretion require any resulting Change Order to calculate Change in Costs on a unit price basis instead of the methodology set out in Section 2 of this Appendix A to this Schedule 24, provided that the calculation of such basis has itself been previously agreed with the O&M Contractor.

Schedule 25 Dispute Resolution Procedure

1. General

The Parties agree to use Reasonable Efforts to resolve promptly any Dispute pursuant to the terms of this Schedule 25 (*Dispute Resolution Procedure*). Any Dispute with respect to matters relating to the Project Agreement shall be resolved pursuant to Sections 2 and 4 of this Schedule 25. Any Dispute with respect to matters relating to this Agreement shall be resolved pursuant to Section 2 and 3 of this Schedule 25. For the avoidance of doubt, the Parties have the right to refer any Dispute to the Dispute Resolution Procedure and the absence of any specific reference in the foregoing provisions of this Agreement to a right to refer such matter to the Dispute Resolution Procedure shall not be construed to preclude any Party from referring such matter to the Dispute Resolution Procedure.

2. Informal Resolution

The parties will attempt to resolve any Disputes arising out of this Agreement through a meeting of Designated Senior Representatives. Each party shall attend such meeting within seven (7) days of receipt of notice from the other party requesting such meeting, which notice shall set of the location, time and date of such meeting.

3. Arbitration

- a. If the Dispute cannot be resolved in accordance with Section 3 above within ten (10) days of the initiation of good faith negotiations between the Designated Senior Representatives, then either Party will have the right to submit the Dispute or Claim involving any claim or controversy between the Developer and the O&M Contractor to binding arbitration in accordance with this Section 3 upon written notice of either Party delivered to the other of such Party's intention to arbitrate, the nature of the Dispute, the amount claimed and the decision sought. Arbitration under this Section 3 shall be conducted by JAMS or its successor in accordance with its Streamlined Arbitration Rules and the Federal Arbitration Act, 9 USC Section 1 et seq. The notice of intent to arbitrate also shall specify the name and address of an arbitrator selected by the Party requesting arbitration. The other Party shall within five (5) Working Days of receipt of the arbitration notice select its arbitrator; provided that if it fails to do so, the arbitrator appointed by the Party requesting arbitration shall serve as the sole arbitrator of the Dispute. However, if both Parties name an arbitrator, the two arbitrators thus selected shall within five (5) Working Days of the selection of the second arbitrator select the third arbitrator. All arbitrators shall be qualified, independent and neutral. The decision of any two of the three arbitrators on any issue shall be final. Unless the Parties otherwise agree, all arbitration proceedings shall be held in the County of Denver, Colorado. The Developer and the O&M Contractor shall proceed with any arbitration expeditiously. All conclusions and decisions of the arbitration shall be made consistent with applicable legal principles and the arbitrators' good faith interpretation of the terms and provisions of this Agreement. The award of the arbitrators will be final and binding on both Parties and may be enforced in any court having jurisdiction over the Party against which enforcement is sought. Each Party shall bear its own expenses, including but not limited to counsel fees and witness fees. If the arbitrators determine that the claim or defense of either Party was frivolous (i.e., without justifiable merit), they may require that the Party at fault pay or reimburse the other Party for costs of the arbitration in whole or in part, except that all expenses of the arbitration shall be apportioned in the award of the arbitrators based upon the respective merit of the positions of the Parties.
- b. NOTWITHSTANDING THE FOREGOING, EQUITABLE REMEDIES, INCLUDING INJUNCTION AND SPECIFIC PERFORMANCE, SHALL BE AVAILABLE TO THE PARTIES BY JUDICIAL PROCEEDINGS AT ANY TIME AND, FOR THIS PURPOSE AND FOR THE PURPOSE OF ENFORCING ANY ARBITRAL AWARD OR DECISIONS, THE PARTIES HEREBY SUBMIT TO THE EXCLUSIVE JURISDICTION AND VENUE

OF THE FEDERAL AND STATE COURTS IN THE COUNTY OF DENVER, COLORADO. EACH OF THE PARTIES HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING UNDER THIS AGREEMENT AND FOR ANY COUNTERCLAIM IN SUCH AN ACTION OR PROCEEDING. THE PROVISIONS OF THIS SECTION 3b SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

4. Requested Dispute Procedures

The procedures, rights, obligations and indemnities set forth in this Section 4 are hereinafter referred to as the "Requested Dispute Procedures".

- a. With respect to any disputes relating to (1) any granting or provision by the Enterprises of relief with respect to a Developer Right resulting from a request for relief by the O&M Contractor pursuant to Part 1, Section 6 of this Agreement or (2) any obligation of the O&M Contractor under this Agreement which is an obligation of Developer under the Project Agreement, the satisfactory performance of which requires the approval of, consent to or a determination by, the Enterprises pursuant to the Project Agreement with respect to which the terms of this Agreement expressly permit the O&M Contractor to invoke these Requested Dispute Procedures, Developer agrees to pursue against the Enterprises a Project Agreement Dispute in accordance with the reasonable request of O&M Contractor and to seek to enforce the Developer's rights and remedies under the Project Agreement that relate to the O&M Contractor's rights and obligations with respect to the O&M Work After Construction under this Agreement, in the same manner and with the same diligence as the Developer would assert its own Project Agreement Claims and defenses, including without limitation, to submit Project Agreement Disputes to the Project Agreement Dispute Resolution Procedure, so long as (i) prior to the Developer initiating the Project Agreement Dispute Resolution Procedure, the Parties have discussed the consequences of taking such action on the interests of the Developer and the Project as a whole and any other alternatives available to the Parties and (ii) such Dispute is not, in the Developer's reasonable discretion, frivolous or an abuse of process. The O&M Contractor shall assist, at its expense, the Developer as requested by Developer with respect to the negotiation of any Project Agreement Requested Dispute with the Enterprises.
- b. To the extent permitted under the Project Agreement or by the Enterprises, the Developer shall allow the O&M Contractor (i) to reasonably participate in the Developer's assertion of the Project Agreement Requested Dispute and defenses under the corresponding Project Agreement Dispute Resolution Procedure, and (ii) to reasonably request that certain steps be taken by the Developer with respect to the advancement of such Project Agreement Requested Dispute or assertion of such defenses in the resolution of such Project Agreement Requested Dispute (and the Developer shall take such reasonably requested steps).
- c. The O&M Contractor shall indemnify, defend and hold harmless the Developer from and against all Claims, Losses, and reasonable costs and expenses incurred or suffered in connection with or as a result of the Developer's initiating, at the request of the O&M Contractor, a Project Agreement Requested Dispute against the Enterprises and the participation by the O&M Contractor in the Project Agreement Dispute Resolution Procedure pursuant to Section 4b, including any for which the Developer is liable to the Enterprises or any other Person.
- d. The O&M Contractor shall not be entitled to any further relief under this Agreement in respect of any Project Agreement Requested Dispute if (A) the Developer obtains the relief requested by the O&M Contractor and provides such relief to the O&M Contractor, (B) the Developer (with the written consent of the O&M Contractor, which shall not be unreasonably withheld, conditioned or delayed) agrees to a compromise with the Enterprises, or (C) the matter is finally resolved in accordance with the Project Agreement. This provision of this Section 4d shall not affect any other provision of this

Agreement specifying that the Developer's obligation to provide the O&M Contractor with relief under this Agreement shall be dependent upon and to no greater extent than any relief the Developer actually receives from Enterprises under the Project Agreement, including without limitation Equivalent Project Relief and the Pay-if-Paid Provisions.

- e. To the extent that the Enterprises commences a Project Agreement Dispute against the Developer under the Project Agreement Dispute Resolution Procedure relating to any obligation of the Developer under the Project Agreement the fulfillment of which is an obligation of the O&M Contractor under this Agreement, the O&M Work After Construction under this Agreement or any matter relating thereto, the O&M Contractor shall, at its own expense, provide such assistance to the Developer in resolving such Project Agreement Dispute as Developer may request.
- f. The O&M Contractor shall cooperate with any reasonable requests for information or assistance provided to it through the Project Agreement Dispute Resolution Procedure, except to the extent that such cooperation shall require the O&M Contractor to assume any legal liability.

5. **Intentionally Omitted**

6. **No Joinder**

No proceedings to resolve any Dispute arising out of or relating to the Project Agreement shall include, by consolidation or joinder or in any other manner, any additional Person, including the O&M Contractor or any Subcontractor, not a Party to the Project Agreement, except with the written consent of each Party to the Project Agreement and any other Person sought to be so joined.

7. **Intentionally Omitted**

8. **Continuation of Work**

During the course of resolving any Dispute pursuant to this Schedule 25 and this Agreement, the O&M Contractor will continue with the O&M Work After Construction (including any O&M Work After Construction that is the subject of the Dispute) in accordance with this Agreement.

9. **Costs of Dispute Resolution**

Each Party shall bear its own costs and expenses, including attorneys' fees, in any Dispute arising out of this Agreement, except as expressly provided therein or pursuant to the terms of any binding Dispute resolution.

Schedule 26
Intentionally Omitted

**Schedule 27
Key Personnel**

O&M Manager

Position Description: Responsible for ensuring that all O&M Activities requirements of this Agreement are met and coordinating with Developer's designated manager for Renewal Work as set forth in the Renewal Threshold Matrix.

Qualifications: The O&M Manager shall have demonstrated experience and expertise in a similar role on managing the operations, maintenance on highway projects of similar scope, value, nature, and complexity to the Project.

Minimum Period of Availability: From Agreement Date to the end of the O&M Term.

To be seconded to/employed by: O&M Contractor



Schedule 28
Intentionally Omitted

Schedule 29
TIFIA Representations and Warranties

1. Definitions

For purposes of this Schedule:

“Anti-Corruption Laws” means all laws, rules and regulations of any jurisdiction from time to time concerning or relating to bribery or corruption.

“Anti-Money Laundering Laws” means all U.S. and other applicable laws, rules and regulations of any jurisdiction from time to time concerning or related to anti-money laundering, including but not limited to those contained in the Bank Secrecy Act and the Patriot Act.

“Bank Secrecy Act” means the Bank Secrecy Act of 1970, as amended, and the regulations promulgated thereunder.

“Material Adverse Effect” means a material adverse effect on (a) the O&M Work After Construction, (b) the business, operations, properties, condition (financial or otherwise) or prospects of the O&M Contractor, (c) the legality, validity or enforceability of any material provision of any O&M Project Document, or (d) the ability of the O&M Contractor to enter into, or perform or comply with any of its material obligations under, any O&M Project Document to which it is a party.

“OFAC” means the Office of Foreign Assets Control of the United States Department of the Treasury.

“Patriot Act” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, as amended, and all regulations promulgated thereunder.

“Principals” has the meaning provided in 2 C.F.R. § 180.995.

“Represented Environmental Laws” has the meaning given in Section 2(j) of this Schedule 29 (*TIFIA Representations and Warranties*).

“Sanctions” means economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by the Government, including those administered by OFAC or the U.S. Department of State.

2. Representations and Warranties

- (a) Consents and Approvals. No consent or approval of any trustee, holder of any Indebtedness of the O&M Contractor or any other Person, and no consent, permission, authorization, order or license of, or filing or registration with, any Governmental Authority is necessary in connection with (i) the execution and delivery by the O&M Contractor of the O&M Project Documents to which it is a party, except as have been obtained or made and as are in full force and effect, or (ii) (A) the consummation of any transaction contemplated by the O&M Project Documents or (B) the fulfillment of or compliance by the O&M Contractor with the terms and conditions of the O&M Project Documents, except as have been obtained or made and as are in full force and effect or as are ministerial in nature and can reasonably be expected to be obtained or made in the ordinary course on commercially reasonable terms and conditions when needed.

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- (b) Litigation. There is no action, suit, proceeding or, to the knowledge of the O&M Contractor, any inquiry or investigation, in any case before or by any court or other Governmental Authority pending or, to the knowledge of the O&M Contractor, threatened against or affecting the O&M Work After Construction or the ability of the O&M Contractor to execute, deliver and perform its obligations under the O&M Project Documents to which it is a party. There is no action, suit, proceeding or, to the knowledge of the O&M Contractor, any inquiry or investigation before or by any court or other Governmental Authority pending or, to the knowledge of the O&M Contractor, threatened against or affecting the O&M Work After Construction, the O&M Contractor or the assets, properties or operations of the O&M Contractor, that in any case could reasonably be expected to result in a Material Adverse Effect. To the O&M Contractor's knowledge, there are no actions of the type described above pending, threatened against or affecting any O&M Contractor-Related Entity, except for matters arising after the Agreement Date that could not reasonably be expected to result in a Material Adverse Effect.
- (c) No Debarment. The O&M Contractor and its Principals (i) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency; (ii) have not within a three (3) year period preceding the Agreement Date been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; (iii) are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in clause (ii); and (iv) have not within a three (3) year period preceding the Agreement Date had one or more public transactions (federal, state or local) terminated for cause or default.
- (d) Accuracy of Representations and Warranties. The representations, warranties and certifications of the O&M Contractor set forth in Schedule 2 to this Agreement are true, correct and complete, except to the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties shall be true, correct and complete as of such earlier date).
- (e) Compliance with Federal Requirements. The O&M Contractor has complied, with respect to the O&M Work After Construction, with all applicable requirements of NEPA, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601 *et seq.*), and Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*).
- (f) Governmental Approvals. All Governmental Approvals required as of the Agreement Date and any subsequent date on which this representation is made (or deemed made) for the undertaking and completion by the O&M Contractor of the O&M Work After Construction have been obtained or effected and are in full force and effect and there is no basis for, nor proceeding that is pending or threatened that could reasonably be expected to result in, the revocation of any such Governmental Approval. The O&M Contractor has no reason to believe that any Governmental Approval that is not required until after any date as of which this representation and warranty is made will not be obtained or effected in the ordinary course in a timely manner when so required. The O&M Contractor is not in default (and no event has occurred and is continuing that with the giving of notice or the passage of time or both could constitute a default) with respect to any Governmental Approval, which default could reasonably be expected to result in a Material Adverse Effect.
- (g) O&M Project Documents. Each O&M Project Document is in full force and effect and all conditions precedent to the obligations of the respective parties under each O&M Project

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Document have been satisfied. No event has occurred that gives the O&M Contractor or, to the O&M Contractor's knowledge, any other Person, the right to terminate any such O&M Project Document. The O&M Contractor is not in breach of any material term in or in default under any of such agreements or contracts and, to the knowledge of the O&M Contractor, no party to any of such agreements or contracts is in breach of any material term therein or in default under any such agreement or contract.

- (h) OFAC: Anti-Money Laundering; Anti-Corruption.
- (i) None of (a) the O&M Contractor nor any of its directors, officers or employees, (b) any Person owning individually or in the aggregate, directly or indirectly, a ten percent (10%) or greater beneficial interest in the O&M Contractor, nor (c) to the knowledge of the O&M Contractor, any agent of the O&M Contractor that has acted on behalf of the O&M Contractor in connection with the Project, is a Sanctioned Person.
 - (ii) The O&M Contractor and the directors, officers, and employees of the O&M Contractor are in compliance with all applicable Sanctions, Anti-Money Laundering Laws, Anti-Corruption Laws and anti-drug trafficking or anti-terrorism laws and have not within the past five (5) years violated any applicable Sanctions, Anti-Money Laundering Laws, Anti-Corruption Laws or anti-drug trafficking or anti-terrorism laws.
 - (iii) There are no pending or, to the knowledge of the O&M Contractor, threatened claims or investigations by any Governmental Authority against, or any internal investigations within the past five (5) years that have resulted in the disclosure of any violation of applicable Sanctions, Anti-Money Laundering Laws, Anti-Corruption Laws or anti-drug trafficking or anti-terrorism laws to any Governmental Authority conducted by, the O&M Contractor with respect to any possible or alleged violations of any Sanctions, Anti-Money Laundering Laws, Anti-Corruption Laws, or anti-drug trafficking or anti-terrorism laws.
 - (iv) The O&M Contractor has implemented and maintains in effect policies and procedures designed to ensure compliance by the O&M Contractor and its directors, officers, and employees with all applicable Sanctions, Anti-Money Laundering Laws, Anti-Corruption Laws, and anti-drug trafficking or anti-terrorism laws.
 - (v) Neither the O&M Contractor nor any Person owned or controlled by the O&M Contractor engages in any activity with respect to which an offeror must make a certification or representation pursuant to Subpart 25.7 of the Federal Acquisition Regulation, 48 C.F.R. § 25.7. To the O&M Contractor's knowledge, no Subcontractor of any tier, or Person owned or controlled by any Subcontractor of any tier engages in any activity with respect to which an offeror must make a certification or representation pursuant to Subpart 25.7 of the Federal Acquisition Regulation, 48 C.F.R. § 25.7.
 - (vi) No transaction contemplated by this Agreement or any other O&M Project Document will violate any applicable Sanctions, Anti-Money Laundering Laws, or Anti-Corruption Laws, or any applicable anti-drug trafficking or anti-terrorism laws.
- (i) Compliance with Law. Each of the O&M Contractor and each other O&M Contractor-Related Entity is in compliance in all material respects with, and has conducted (or caused to be conducted) its business and operations and the business and operations of the Project in compliance in all material respects with, all applicable laws (other than

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Represented Environmental Laws, which are addressed in (j), below). No notices of violation of any applicable law have been issued, entered or received by the O&M Contractor or any other O&M Contractor-Related Entity, other than, in each case, notices of violations that are immaterial.

- (j) Environmental Matters. Each of the O&M Contractor and each other O&M Contractor-Related Entity is in compliance with all laws applicable to the O&M Work After Construction relating to (i) air emissions, (ii) discharges to surface water or ground water, (iii) noise emissions, (iv) solid or liquid waste disposal, (v) the use, generation, storage, transportation or disposal of toxic or hazardous substances or wastes, (vi) biological resources (such as threatened and endangered species), and (vii) other environmental, health or safety matters, including all laws applicable to the Project referenced in the notice "Federal Environmental Statutes, Regulations, and Executive Orders Applicable to the Development and Review of Transportation Infrastructure Projects," 79 Fed. Reg. 22756 (April 23, 2014) (or any successor Federal Register notice of similar import), which document is available at <http://www.transportation.gov/policy/transportation-policy/environment/laws> (collectively, "**Represented Environmental Laws**"). All Governmental Approvals for the O&M Work After Construction relating to Represented Environmental Laws have been, or, when required, will be, obtained and are (or, as applicable, will be) in full force and effect. Neither the O&M Contractor nor any other O&M Contractor-Related Entity has received any written communication or notice, whether from a Governmental Authority, employee, citizens group, or any other Person, that alleges that the O&M Contractor or such other O&M Contractor-Related Entity is not in full compliance with all Represented Environmental Laws and Governmental Approvals relating thereto in connection with the O&M Work After Construction and, to the O&M Contractor's knowledge, there are no circumstances that may prevent or interfere with full compliance in the future by the O&M Contractor or any other O&M Contractor-Related Entity with any such Represented Environmental Law or Governmental Approval. The O&M Contractor has provided to the Developer all material assessments, reports, results of investigations or audits, and other material information in the possession of or reasonably available to the O&M Contractor or any other O&M Contractor-Related Entity regarding the O&M Contractor's or the O&M Work After Construction's compliance with (A) Represented Environmental Laws, and (B) Governmental Approvals relating to Represented Environmental Laws that are required for the O&M Work After Construction.
- (k) Sufficient Rights and Utilities. The O&M Contractor possesses either valid legal and beneficial title to, leasehold title in, or other valid legal rights with respect to the real property relating to the Project, in each case as is necessary and sufficient as of the date this representation is made for the performance of the O&M Work After Construction. As of any date on which this representation and warranty is made, the Governmental Approvals that have been obtained and are then in full force and effect create rights in the O&M Contractor sufficient to enable the O&M Contractor to perform the O&M Work After Construction. All utility services, means of transportation, facilities and other materials necessary for the operation and maintenance of the Project (including, as necessary, gas, electrical, water and sewage services and facilities) are, or will be when needed, available to the Project and arrangements in respect thereof have been made, or will be made when needed, on commercially reasonable terms.
- (l) Insurance. The O&M Contractor is in compliance with all insurance obligations required under this Agreement as of each date on which this representation and warranty is made.
- (m) Intellectual Property. The O&M Contractor owns, or has adequate licenses or other valid rights to use, all patents, trademarks, service marks, trade names, copyrights, franchises, formulas, licenses and other rights with respect thereto and has obtained assignment of all licenses and other rights of whatsoever nature, in each case, necessary for the O&M Work After Construction. To the O&M Contractor's knowledge, there exists no conflict

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with the rights or title of any third party with respect to the intellectual property described in the preceding sentence. Excluding the use of commercially available “off-the-shelf” software, to the O&M Contractor’s knowledge, no product, process, method, substance, part or other material produced or employed or presently contemplated to be produced by or employed by the Project infringes or will infringe any patent, trademark, service mark, trade name, copyright, franchise, formula, license or other intellectual property right of any third party.

- (n) Patriot Act. The O&M Contractor and each O&M Contractor-Related Entity that is subject to compliance with the Patriot Act has established an anti-money laundering compliance program if and as required by the Patriot Act and is in compliance with the Patriot Act in all material respects.

ATTACHMENT A
SCOPE OF SERVICES

Item	Description	Unit	Quantity
1	[REDACTED]	[REDACTED]	[REDACTED]
2	[REDACTED]	[REDACTED]	[REDACTED]
3	[REDACTED]	[REDACTED]	[REDACTED]
4	[REDACTED]	[REDACTED]	[REDACTED]
5	[REDACTED]	[REDACTED]	[REDACTED]
6	[REDACTED]	[REDACTED]	[REDACTED]
7	[REDACTED]	[REDACTED]	[REDACTED]
8	[REDACTED]	[REDACTED]	[REDACTED]
9	[REDACTED]	[REDACTED]	[REDACTED]
10	[REDACTED]	[REDACTED]	[REDACTED]
11	[REDACTED]	[REDACTED]	[REDACTED]
12	[REDACTED]	[REDACTED]	[REDACTED]
13	[REDACTED]	[REDACTED]	[REDACTED]
14	[REDACTED]	[REDACTED]	[REDACTED]
15	[REDACTED]	[REDACTED]	[REDACTED]
16	[REDACTED]	[REDACTED]	[REDACTED]
17	[REDACTED]	[REDACTED]	[REDACTED]
18	[REDACTED]	[REDACTED]	[REDACTED]
19	[REDACTED]	[REDACTED]	[REDACTED]
20	[REDACTED]	[REDACTED]	[REDACTED]
21	[REDACTED]	[REDACTED]	[REDACTED]
22	[REDACTED]	[REDACTED]	[REDACTED]
23	[REDACTED]	[REDACTED]	[REDACTED]
24	[REDACTED]	[REDACTED]	[REDACTED]
25	[REDACTED]	[REDACTED]	[REDACTED]
26	[REDACTED]	[REDACTED]	[REDACTED]
27	[REDACTED]	[REDACTED]	[REDACTED]

[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	Partial	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Appendix

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

1	[REDACTED]							
					[REDACTED]	[REDACTED]		
					[REDACTED]	[REDACTED]		
					[REDACTED]	[REDACTED]		
					[REDACTED]	[REDACTED]		
[REDACTED]	[REDACTED]					[REDACTED]		

	<p>[REDACTED]</p>	<p>[REDACTED]</p>	<p>[REDACTED]</p>	<p>[REDACTED]</p>	<p>[REDACTED]</p>	<p>[REDACTED]</p>		
<p>[REDACTED]</p>		<p>[REDACTED]</p>	<p>[REDACTED]</p>	<p>[REDACTED]</p>	<p>[REDACTED]</p>	<p>[REDACTED]</p>		

█	█	█	█	█	█	█	█	█
█	█	█	█	█	█	█	█	
█	█	█	█	█	█	█	█	
█	█	█	█	█	█	█	█	
█	█	█	█	█	█	█	█	

| [REDACTED] |
|------------|------------|------------|------------|------------|------------|------------|------------|------------|
| [REDACTED] |

[REDACTED]							
[REDACTED]							

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
3. STRUCTURES								
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

[REDACTED]								
[REDACTED]								

| [REDACTED] |
|------------|------------|------------|------------|------------|------------|------------|------------|------------|
| [REDACTED] |

█	█	█	█	█	█	█	█	█
█	█	█	█	█	█	█	█	
█	█	█	█	█	█	█	█	
█	█	█	█	█	█	█	Included	

[REDACTED]							
[REDACTED]							

[REDACTED]								
[REDACTED]								

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
4. ROADWAY MARKING							
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

[REDACTED]							
[REDACTED]							

[REDACTED]								
[REDACTED]								
[REDACTED]								

[REDACTED]								
[REDACTED]							[REDACTED]	[REDACTED]
[REDACTED]								

█	█	█	█	█	█	█	█	█
6. SIGNS								
█	█	█	█	█	█	█	█	

[REDACTED]							
[REDACTED]							
[REDACTED]							
[REDACTED]							
[REDACTED]							
[REDACTED]							

[REDACTED]							
[REDACTED]							
[REDACTED]							
[REDACTED]							
[REDACTED]							

█	█	█	█	█	█	█	█	█
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R								

<p>[REDACTED]</p>								
<p>[REDACTED]</p>								

[REDACTED]							
[REDACTED]							
[REDACTED]							
[REDACTED]							
[REDACTED]							
[REDACTED]							
[REDACTED]							

[REDACTED]								
[REDACTED]								
[REDACTED]								
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[REDACTED]								
[REDACTED]								
[REDACTED]								

R	[REDACTED]							
		[REDACTED]						
[REDACTED]								
[REDACTED]	[REDACTED]					[REDACTED]	[REDACTED]	
[REDACTED]								
[REDACTED]								

[REDACTED]							
[REDACTED]							
[REDACTED]							
[REDACTED]							

R								

R							

